



# "Sentinel" Patent Locomotives

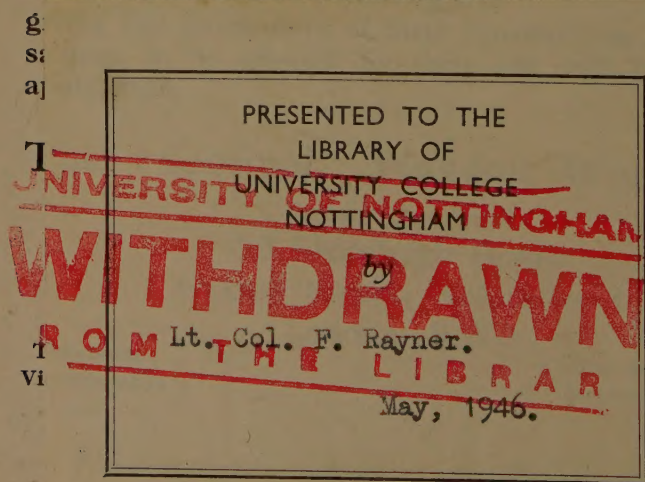
## On the Railways

"Sentinel" locomotives can work light passenger or goods trains composed of existing railway rolling stock at a cost which enables more frequent services to be given, attracting more traffic and increasing earning power. They are manufactured for all gauges and to cover a wide range of powers and speeds. One Railway Company already has 37 and has just ordered a further 12.

## For Industrial Use

in Mines, Forests, Plantations and on Public Works, their simplicity of operation, requiring only one man and no great degree of skill, makes them particularly suitable, while their low running and maintenance costs puts them economically in a class by themselves. On one large project alone, 29 narrow gauge "Sentinel" Locomotives are at work.

## An Illustrated Catalogue





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"SENTINEL" LOCOMOTIVE WORKING ON LONDON AND NORTH  
EASTERN RAILWAY



"SENTINEL" LOCOMOTIVE WORKING ON GREAT WESTERN  
RAILWAY

# "Sentinel" Patent Locomotives

A few examples of "Sentinel" working, communicated to us by users:

## GREAT BRITAIN

**A Well-known Shipyard.**—Two Sentinel double-g geared locos (CEDG type) are each consuming per week 17 cwt. of coke at 19s. 6d. per ton and 1,500 gallons of water as against 77 cwt. of coal at 23s. 6d. and 5,600 gallons of water consumed by the locomotives of normal type which they have displaced.

**In a Quarry.**—Consumptions per week are as follows—

Coal	. . . . .	13 cwt.
Water	. . . . .	1,650 gallons.
Oil	. . . . .	6 pints.

Load up to 40 tons. Average gradient, 1 in 29.

Total average weekly cost, £8 9s. 10d.

**Railway Shunting.**—A "Sentinel" (CE type) loco carried out a day's work in a marshalling yard on a coal consumption of 6 cwt. as against 28 cwt. of the ordinary six-wheel tank engine. It proved itself capable of hauling a load of 500 tons on the level.

## INDIA, on Public Works (CE type).

Load hauled	Coal per mile	Water
160 tons	11½ lb.	5 galls.
115 tons	7·15 lb.	4·7 galls.
220 tons	12·31 lb.	6·25 galls.

■ A BE type is hauling 42 hopper waggons up gradients of 1 in 110, doing three times the work previously done by a petrol tractor at one-third of the cost.

## **Railway Passenger Service (CE type).**

Load—2 carriages and guard's van.

Coal consumption, 8 cwt. per day or 11½ lb. per mile.

NOTE.—Bengal coal and track in bad condition.

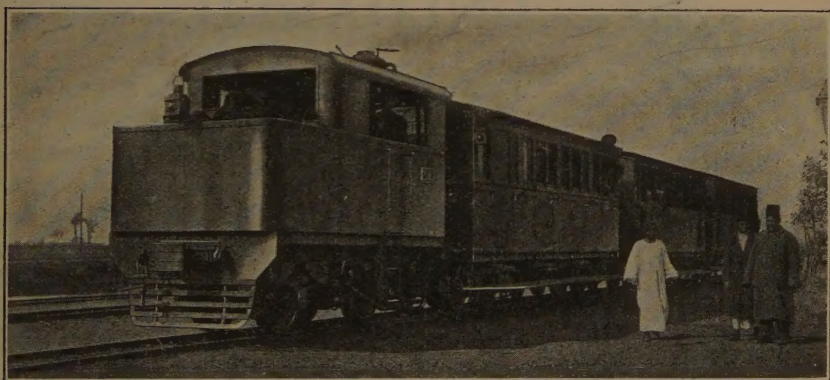
## FRANCE.

**Railway Working.**—A "Sentinel" (CE type) loco has shown a consumption of 4·27 kg. per kilometre when hauling 81 tons at a speed of about 30 km. per hour. It has also shown itself capable of hauling a goods train of 300 tons and shunting for waggon sorting a train of 150 tons.





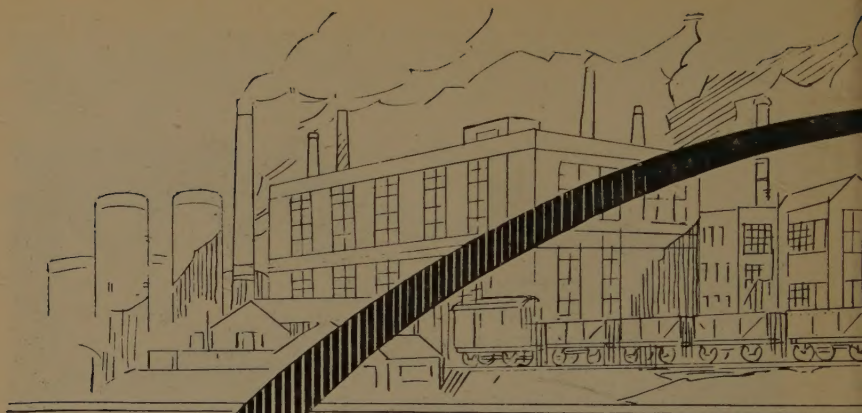
"SENTINEL" LOCOMOTIVE ON INDIAN RAILWAY



"SENTINEL" LOCOMOTIVE ON EGYPTIAN DELTA LIGHT RAILWAY

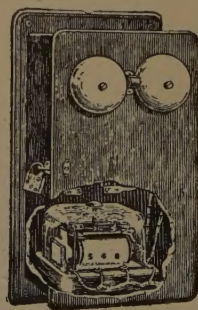


WORKING LIGHT GOODS TRAIN

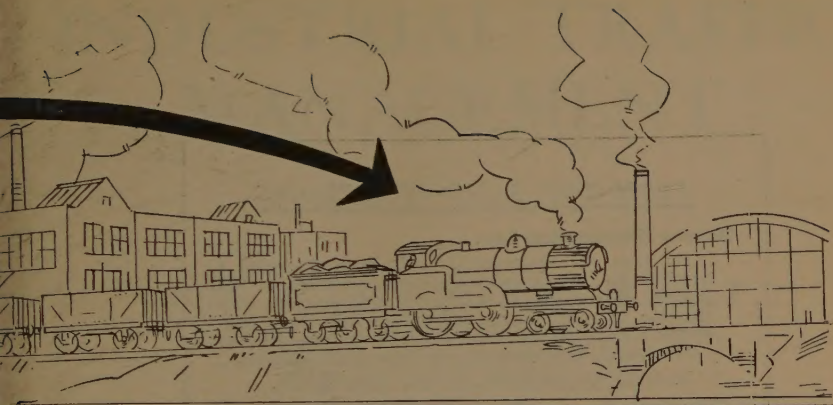


## THAT TRAIN HAS UNLOADED

Without some efficient method of control, overlapping is bound to occur on large railway areas, especially if there is much shunting to be done. This overlapping adds vastly to the overhead charges and should be guarded against as far as possible. The only method compatible with rigid economy is the installation of a **Standard Traffic Control System**.







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TRAFFIC MANAGER OF MESSRS. LEVER BROS., LTD., PORT SUNLIGHT

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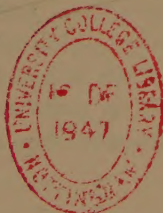
WITH A FOREWORD

BY

SIR FELIX J. C. POLE



*THIRD EDITION*



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## FOREWORD

SINCE the former edition of this work was issued seven years ago, the Railways Act, 1921, has come into operation. It is, therefore, most opportune that the author should have prepared a revised and enlarged edition in which he has embodied interesting data in regard to the proceedings incidental to the revision of railway rates and the functions of the Railway Rates Tribunal.

The first and second editions of this book, apart from other works from the same pen, established the author as an authority upon transport matters, and earned for him the reputation for fairness in the treatment of his subjects. Evidence in the same direction characterizes the present edition. Moreover, the thoroughness with which the subject is treated, and the readable and interesting style in which the work is written, are qualities which will go far towards making the book popular and useful.

Everyone will agree that it is far more satisfactory to deal with a person who knows and appreciates the other man's position, than to negotiate with someone who has studied only his own side of the question ; hence it is that I have no hesitation in writing a short preface to this book—the object of which is to give the traders of the United Kingdom such knowledge and information as will be helpful to them in their dealings with the great carrying concerns. This is most desirable, because the Railways Act, 1921, has created what is virtually a partnership between the railways and the trading and travelling public, so that to-day more than ever before, the subject of transport should be studied systematically by all who use the railways or who are engaged in their operation.

I welcome this revised edition of Mr. Lissenden's work, and commend it alike to traders and railwaymen.

FELIX J. C. POLE

GREAT WESTERN RAILWAY,  
PADDINGTON STATION.





## FOREWORD TO SECOND EDITION

TEN years ago the subject of transportation and the relative costs of transportation received little attention, for more pressing and urgent matters forced themselves upon the immediate care of manufacturers and merchants, but neither manufacturer nor merchant can any longer afford to neglect the subject of transportation and its proper organization in their own industries, for to-day it is one of prime importance, not only to the economical conduct of their business, but, in many cases, to its very existence.

Since the War, railway rates for many industries have become prohibitive, and, if there were no alternative, would kill many industries. It behoves everyone interested in the subject of transport to give a deep and profound study to each and every means of transportation now available.

At the present time, by order of the Minister of Transport, a public inquiry is being held into the whole question of the rates and charges and conditions of conveyance for goods over the railways of the United Kingdom, and it is not improbable that further and very far-reaching changes may be made in the near future.

The aim and ambition of every wise manufacturer or merchant is to produce and to deal in articles which he could place upon the market with the full assurance of their merits and their intrinsic value. To attain this end costly research work has been undertaken to provide the best raw materials, the most up-to-date machinery, and to have the workmen carefully trained, so that the finished article would command a ready sale.

The science of advertising has been carried out successfully. Labels, packets, containers, as well as advertisements, have been designed to make the best possible appeal to the consumer. Salesmen have been specially trained to present the goods intelligently and in such a manner as to create perfect confidence, founded on merit, price and quality, in the mind of the wholesaler and retailer and consumer.

The weak chain in the link is now found to be the subject of transport, and the wise manufacturer and merchant must now

proceed to strengthen that weak link by creating and establishing around him an expert traffic staff to deal with this most important branch of his business in a complete and perfect manner, so as to grapple effectively with the complex subject of transport in all its branches—rail, road and sea, canal and river.

Mr. Lissenden has handled the subject in this book with great skill derived from experience and knowledge of the problems that require to be solved, and the perusal of his book will be found of the greatest help to all affected by the present problems of transport and interested in their correct solution.

LEVERHULME.

*March, 1921*

## PREFACE

THE man who is in demand to-day, and who will be in even greater demand in future, is the well-informed man, the man of knowledge, he who *knows*.

Severe competition absolutely compels the modern manufacturer to give up old-fashioned and wasteful ways of doing business and to employ scientific methods. Thus, there is created a demand for scientific men, scientific Sales Managers, Traffic Managers, and so on.

For the education of prospective Sales Managers in regard to the leading principles of their profession, adequate provision has been made: there is a good supply of textbooks on Salesmanship and Sales Management on the market, and first-class colleges for the instruction of aspirants to managerial positions in that walk of life have been established and are performing most useful service to the commercial community; but Traffic Managers, or rather would-be Traffic Managers, are not at present so well provided for. That is why I have endeavoured in the following pages to deal fully and comprehensively with the whole science of traffic management.

Some day, perhaps, the above-mentioned deficiency will be remedied and we English will be as well off as the Americans in this respect, and have *our* Traffic "Universities." The thing is sure to come as a commercial necessity.

Meanwhile, as already indicated, this book is written primarily to assist aspirants to qualify for bigger and better jobs: to enter the traffic world, where they will find plenty of scope for their abilities and opportunities for advancement. But seeing that the more advanced subjects—e.g. The Theory and Practice of Railway Rate-making, Rebates, Undue Preference, Increased Railway Rates—also are treated exhaustively from both the legal as well as the practical point of view, it will be of some use to those already holding positions of importance in traffic departments.

Incidentally, too, this volume may be of some service to others: the chapter on Coastline Depots and Coastwise Carriers, for instance, cannot fail to interest those Managing Directors and Sales Managers



who are planning new schemes for the development of distant territory. The same gentlemen may, perhaps, consider the chapter on Complaints and Claims worthy of recommendation to their correspondence clerks. If so—if I can thus interest all four classes—my purpose will be more than accomplished.

GEO. B. LISSENDEN.

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# INDUSTRIAL TRAFFIC MANAGEMENT

## CHAPTER I

### ON PACKING AND ADDRESSING GOODS FOR CONVEYANCE

ONE of the first things which the student of transportation has to consider is the question of packing ; indeed, the way in which merchandise is packed for conveyance by railway so largely influences not only the cost of carriage—a fact which will be made quite clear in a few moments—but also the railway company's attitude towards the trader in the event of delay, damage or loss arising in transit, that we shall be wise in going into this subject thoroughly at the very outset. First, then, as to the legal position.

#### THE LEGAL POSITION.

In the case of *Barbour v. The South-Eastern Railway Company* (34 *L.T.*, 67) the Court laid it down very distinctly that “ no person is entitled to claim compensation from others for damage occasioned by his neglect to do something which it was his duty to do,” e.g. to pack his goods in such a way as to ensure their safe transit when ordinary care is used ; and all the railway companies give notice to the following effect, this particular regulation being No. 12 from the “ General Conditions ” on the back of the Great Western Railway Company's consignment note : “ The Company will not be liable for any loss of, or damage to, or delay of merchandise resulting from it not being properly protected by packing or not sufficiently addressed.”

The case of *Baldwin v. the L.C. and D. Railway Co.* (9 *Q.B.D.* 582) shows what serious consequences may arise if goods are not properly packed. Here it was shown that certain bales of rags were sent by the defendants' railway to a consignee who was a paper manufacturer. The bales were marked “ Rags,” and should, in the ordinary course, have been delivered within twenty-four



hours. By mistake, however, they were sent to the wrong place and lost sight of, and in consequence they were not delivered for over a fortnight. It was then found that the rags had heated and rotted, and they had to be destroyed. Plaintiffs sued the company for their value. It was proved at the trial that the rags had been packed in a damp state, and that rags so packed will heat and rot and become worthless in a few days, much less than a fortnight. It was also admitted that the company had no notice that the rags were in a bad state. The actual delay caused no loss to the plaintiff; and if the rags had been properly packed, a delay of six months would not have injured them. As, therefore, the damage was caused, not by the delay, but by the improper packing, it was held by the High Court that the plaintiff was not entitled to succeed in his action. (For various other legal decisions on this point see also Chapter XII, page 157, and especially the arguments used and the judgments given in the case of *Gould v. South-Eastern and Chatham Railway Co.*, pages 98 and 164.)

In *Munster v. South-Eastern Railway Co.* (27 L.J.C.P., 308), it was held that a railway company may refuse to receive goods where the packing is so defective that, owing to the character of the goods and the nature of the journey, their condition will entail upon the company extra care and risk. In this case *Williams, J.*, said: "There may, no doubt, be cases where articles of this description (bales of rugs and shawls) may be so carelessly and improperly packed as reasonably to justify a refusal on the part of the company to accept them. But it does not follow that they would be justified in rejecting every package which may be imperfectly packed."

Then there is Regulation 15 of the "General Railway Classification of Goods," as revised and approved by the Railway Rates Tribunal in accordance with the provisions of the Railways Act, 1921, which provides that: "All containers, or other forms of packing material, must be such as to afford efficient and suitable protection to the merchandise."

In connection with this subject of packing the reader is specially referred to the judgments in the case of *Gould v. South-Eastern and Chatham Railway*, page 164. See, too, *Sutcliffe v. Great Western Railway*, page 99. Also *Smith v. Buskell*; *Buskell v. Smith and Great Western Railway Co.*, on page 170; whilst the decision in *Great Western Railway v. Macpherson* (page 191) should not be overlooked.

## THE ECONOMIC POSITION.

But one should be careful to pack one's goods both well and securely, irrespective of any legal obligations, because there is always the customer to be considered; and the experienced know how indignant the average shopkeeper becomes if his goods arrive in a damaged condition. Many a good account has been lost through insufficient attention to this matter, and loss and trouble suffered by the customer. Moreover, there is the further consideration that by adopting certain forms of packing—which, by the way, are largely determined by the requirements of the railway classification—the trader is able to effect considerable economies.

Thus, spatches, scrows and pelts, wet from the tanners, in bags or casks, are, according to the General Railway Classification, chargeable at Class 7; not packed e.o.h.p., Class 10; dry, in casks, bales or bags, Class 12.

Again, for hides there are, according to the General Railway Classification, three classes, i.e. hides, thoroughly salted or dried, in bales, casks, or tied bundles, Class 12; loose, Class 14; unhaired or de-woolled, wet, from fellmongers, Class 12. But in the Railway Clearing House Special Instructions, or "Pink Pamphlet," as it is sometimes called, there are two additional provisions, providing that hides, green or market, including those sprinkled with salt, not in bales, or not tied in bundles, or not packed, are to be charged "as hides, except otherwise herein provided," i.e. at Class 18; and hides salted, in bales, which must be tied with string or rope, when consigned as "salted hides," as "hides thoroughly salted or dried," i.e. at Class 12. Hence, simply by using a few pieces of string and tying the hides together in bundles, a pelt-monger can get a consignment otherwise chargeable at Class 18 through at Class 12, or six rates below, thus effecting a saving on (say) a ton parcel between London and Winchester of 27 per cent or thereabouts, providing he consigned the parcel as he should consign it, as "Salted hides in bundles."

Many articles, in fact, if treated in that way go through at lower rates. Thus, perambulator bodies, separated from the wheels, and tied together in bundles, are chargeable at Class 19, but if sent loose they are chargeable at Class 20. Tramway seats, packed in cases or bundles, go at Class 18, but if sent loose Class 19 rates apply. This, however, is not a hard-and-fast rule, for, on the other

hand, if hay forks are forwarded in bundles they are chargeable at Class 18, whereas, if they are sent in cases, Class 16 applies. From this it will be seen that if the goods or any part of them are dangerous to other goods—as the prongs of hay forks obviously are—the provision of a covering is necessary if it is desired to take advantage of the lower rate, and one must admit that that is only reasonable.

Of course, the more risk there is attaching to the conveyance of certain kinds of goods the more varied are the rates applying to them, and the greater the cost of their transportation. As an instance of this, butter in casks or cases is classified in Class 14 ; in pails with lids, or in hampers, Class 15 ; and in crocks it is classified in Class 20 ; so that the butter-maker has the choice of several methods and will pack his consignments accordingly.

### OTHER CONSIDERATIONS.

Many other considerations enter into this question. Thus, density or bulk affects the rate to be applied to a consignment of drapery, light drapery being classified in Class 19, whereas heavy drapery is classified in Class 18. Compression is another method whereby lower rates may be secured. For instance, hay, hydraulic or steam-pressed packed, comes under Class 10 ; machine-pressed, minimum 40 cwts. per wagon, Class 12 ; whilst hay, e.o.h.p., minimum 30 cwts. per truck, is chargeable at the fifteenth class rate. Similarly with tow waste, which, if hydraulic or steam-pressed, goes at Class 10, otherwise at Class 12 ; whilst china grass has four rates applicable to it, namely, hydraulic or steam-pressed packed, Class 10 ; machine pressed, Class 12; not hydraulic or steam-pressed or machine-pressed, in full truck loads or in consignments of 30 cwts., Class 15 ; otherwise Class 18. Still another method of securing lower and cheaper class rates is that of "nesting." For instance, pails and buckets, or galvanized toy pails, nested, are provided for in Class 16 ; not nested or packed, Class 18.

A railway rate varies, too, according to whether the goods are forwarded in their natural and unfinished or partly or fully prepared state. Thus, walking and umbrella sticks, in the rough state, are classified in Class 16, not in the rough, Class 18 ; whilst stave wood is charged at one rate, and staves and heads prepared for casks at another. Indeed, it would be easy to give dozens of examples to show how the nature of the product and the varying modes of

packing it influence the cost of carriage, and work for or against the trader ; but the foregoing will suffice for the present purpose.

## STUDY THE CLASSIFICATION.

From what has been said, it will be seen that the thing to do is to procure a copy of the current issue of the General Railway Classification—as anyone can do for 2s. 6d. net, from the Railway Clearing House, or by application to the local station-master or goods agent—and ascertain from this what are the requirements of the carriers in regard to a particular class of traffic which is to be forwarded by railway.

Such requirements need not always be complied with, but a comprehensive study of the General Railway Classification will frequently be found to be a profitable occupation. It is absolutely essential, in fact, for the man who has to do with the consigning of goods by railway to be thoroughly familiar with the contents of this publication, which is the basis of all railway charges.

## GOODS MUST BE FULLY ADDRESSED.

In days gone by it was a common practice to send goods about the country by railway under mark, but now the railway companies refuse to accept any goods (at any rate, any small packages), unless they are fully addressed, the only exceptions being with regard to large parcels and truck loads.

A copy of the revised Regulations in this connection, as approved by the Railway Rates Tribunal under the powers conferred upon them by the Railways Act, 1921, is set out below.

### STANDARD REGULATIONS FOR THE ADDRESSING OF MERCHANDISE WHEN CARRIED BY MERCHANDISE TRAIN

(Approved by the Railway Rates Tribunal under Section 43 of the Railways Act, 1921)

1. Each article or package shall (except as hereinafter provided) bear—
  - (a) The Consignee's full name and address in legible and durable characters.
  - (b) A legible and durable distinguishing mark with a label (on the letter-card principle) stating on the outside the name of the station or place of destination and on the inside the name and address of the Consignee.
  - (c) In the case of Wait Order traffic, a legible and durable distinguishing mark together with the name of the station or place of destination, and the full name and address of the person to whose order the article or package is sent.
  - (d) In the case of Export traffic, a legible and durable distinguishing mark



together with the name of the port or dock of shipment, and the name of the ship or shipping agent.

2. Where a consignment consisting of more than ten articles or packages of the same or of a similar description of merchandise is forwarded to the same consignee the following provisions may be adopted—

Number of articles or packages, 11 to 100 :

Not less than one article or package in every five shall be (a) addressed in accordance with Regulation 1 hereof, and (b) marked to show the total number of articles or packages forming the consignment, provided that a minimum number of ten articles or packages shall be addressed and marked as aforesaid in each consignment.

Over 100 :

Not less than one article or package in every ten shall be (a) addressed in accordance with Regulation 1 hereof, and (b) marked to show the total number of articles or packages forming the consignment provided that a minimum number of twenty articles or packages shall be addressed and marked as aforesaid in each consignment.

Provided that where it is not possible for the Trader to indicate the total number of packages forming a consignment to be dispatched by him, each part of the consignment when delivered to the Company must be labelled in accordance with this regulation as if the same were a separate consignment.

3. Subject to Regulation 2 hereof, Metal Bars, Rods, Tubes, Plates, Sheets, Forgings, Castings, Chains and any other similar merchandise shall have the addressing particulars as provided in Regulation 1 hereof conspicuously shown in legible and durable characters—

- (a) On wooden, metal or other durable tallies fastened to the merchandise by wire ; or
- (b) Painted, stencilled or otherwise legibly and durably specified on the merchandise.

Provided that Bars, Rods, Tubes and other articles which do not afford a suitable surface for painting or stencilling shall be securely bound into bundles convenient for handling, by wire, rope or other material to which the Company has given its approval in writing, and that such bundles shall have attached thereto tallies as provided by this condition.

4. Hides, Skins, Pelts or other merchandise carried loose shall have labels, or wooden, metal or other suitable tallies, affixed, and addressed in accordance with Regulation 1 or 2 hereof.

5. Every label, tally, address or mark shall be securely fastened or affixed to the article or package.

6. All old or conflicting labels or addresses shall be removed or entirely obliterated before the article is tendered for carriage.

7. These regulations shall not apply to—

- (a) Returned Empties, when legibly branded with the Owner's name and address.
- (b) Merchandise for which the exclusive use of a wagon is provided by the Company.
- (c) Packages identical in all respects, or packages of uniform description and size containing merchandise identical in all respects, when such articles or packages are forwarded in consignments of two tons and upwards from one sender to one station or place of destination.
- (d) Export and import merchandise conveyed in through trucks direct to ship, and vice versa.
- (e) Merchandise forwarded to Ireland or the Continent of Europe, which is carried subject to special addressing regulations.

But apart from this there is the common law duty of the sender of goods as laid down in the case of the *Caledonian Railway Co. v. Hunter* (20 Sess. Cas. 2nd Ser., 1097). Here it was shown that a parcel of goods was handed to the railway company addressed simply to "William Rae, Draper, Sudbury." Now, it so happens that there are several places named Sudbury—one in Middlesex, one in Derbyshire, and a third in Suffolk



—and in the absence of definite instructions the railway company, in accordance with the usual practice of the carriers, sent the parcel to the nearest town of that name, i.e. the one in Derbyshire, but on arrival there the consignee could not be found. After some considerable time had elapsed it was discovered that the consignee resided in Sudbury, Suffolk, and to that place the parcel was accordingly sent, but it was refused owing to the fact that the goods had been so long in transit. The consignor thereupon sued the company for damages, but the Court held that the company acted quite rightly in sending the parcel to the nearest place of that name ; also that the carriers had done all that was reasonable and proper ; and that the delay was due entirely to the fact that the consignment was not fully directed, and the consignor's claim was dismissed. In giving judgment, *Lord Justice Clerk Hope* said : “ There is no doubt that in order to enforce that liability which ought to exist in the case of railway carriers as well as ordinary carriers, we ought to require a full, distinct, and ample address. If the address be such, and anything afterwards arises from the fault or negligence of the railway company, whether from misreading or from having an imperfect notion of the destination of the goods where there is a full address, or by sending them by a wrong line, or by negligence on the part of those for whom the railway company is responsible, from whatever cause, the company is liable for delay or neglect when the address of the goods is full and distinct. If the address be not ample, full, and distinct, the delay or interruption which takes place arises from the fault on the part of the sender, who is the means of putting the whole thing wrong. With him the fault begins, and he is the cause of the goods not going to their proper destination.”

## CHAPTER II

### HOW TO GET GOODS PROPERLY CLASSIFIED

ANOTHER matter to which the traffic man must necessarily give his early attention is the correct classification of the goods with which he has to deal ; hence the treatment of the subject in the beginning of this volume.

### THE BASIS OF RAILWAY CHARGES.

Theoretically, the charges for the conveyance of merchandise by railway have hitherto been governed by the classification, the rules and regulations and the schedules of maximum rates and charges contained in the various Railway Rates and Charges Acts of 1891 and 1892, but in practice the charges actually made by a railway company to a trader for the carriage of his goods have been based on the provisions of the General Railway (or " Working ") Classification.

Originally the General Railway Classification was little—if anything—more than a reprint of the Parliamentary Classification, together with a number of the provisions as to the conveyance of traffic, embodied in the afore-mentioned Acts of 1891 and 1892, but it has been revised and added to so many times—of late years almost annually—that when the Rates Advisory Committee, appointed by the Minister of Transport under the powers conferred upon him by the Ministry of Transport Act, 1919, came to look into it, it was a fairly bulky book of between four hundred and five hundred pages.

Section 29 of the Railways Act, 1921, however, decreed as follows—

(1) The classification of merchandise for the purposes of this part of this Act shall, in the first instance, be that determined by the Committee appointed under Section twenty-one of the Ministry of Transport Act, 1919, and that Committee shall have power to settle such classification as if they had been empowered for that purpose by that Act, and, notwithstanding anything contained in that Act, shall continue in existence until they have settled such classification.

(2) The classification shall be divided into such number of classes containing such descriptions of merchandise as the Committee think

fit, and the Committee in determining the class into which any particular merchandise shall be placed, shall, in addition to all other relevant circumstances, have regard to value, to the bulk in comparison to weight, to the risk of damage, to the cost of handling, and to the saving of cost which may result when merchandise is forwarded in large quantities.

And as a result of this decree, the Railway Classification, as previously known and understood, has been entirely revised to meet the needs of modern business and divided into two parts, namely—

	<i>Price.</i>
The General Railway Classification of Goods by Merchandise Train . . . . .	2s. 6d.
The Classification of Dangerous Goods by Merchandise Train . . . . .	2s. 6d.

A third has been added—

The Classification of Merchandise for Conveyance by Passenger Train or other Similar Service . . . . .	6d.
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Any of these are obtainable from the Railway Clearing House, Euston Square, London, N.W.1, at the price named, or from the local station-master or goods agent.

## HOW TO GET AN ARTICLE PROPERLY CLASSIFIED.

Now to deal with our main point, namely, how to get an article properly classified—assuming that it has not so far been provided for in the classification, it being a new article, or that circumstances have since arisen which go to prove that when the classification was revised by the Rates Advisory Committee the article was improperly classified. Parliament has wisely provided for such a contingency, and foresaw that, with the development of business, some alterations and additions are bound to be required.

Section 28 of the Railways Act, 1921, decrees that “ the Railway Rates Tribunal shall have power to determine (among other things) . . . the alteration of the classification of merchandise, or the alteration of the classification of any article, or the classification of any article not at the time classified, or any question as to the class in which any article is classified.” Therefore, any further alterations required can be effected by a formal application filed at the office of the Railway Rates Tribunal, 2 Clements’ Inn, Strand, London, W.C.2.

Rule 7 of the Rules of Procedure of the Railway Rates Tribunal provides that an application of this kind must be made in accordance with Form 3, and this form asks the Court for—

(1) An order directing that the article described in the general classification of merchandise as “.....” should be comprised in the class numbered ..... instead of in the class numbered .....

OR

(2) An order directing that the article described in paragraph ..... above which is not specified in the General Classification of Merchandise should be included in Class ..... of such general classification under the description following .....

Rule 30 of the Railway Rates Tribunal Rules of Procedure prescribes that—

(1) Any party may appear and be heard in person, by counsel or solicitor, and, where the party is a firm, any partner may appear on behalf of the firm.

(2) A party may appoint a person who is in his regular employment to act as his representative in any proceedings, and if the appointment is duly made in accordance with these rules, such representative shall be entitled to appear and be heard on all occasions when his principal might so appear, and to do in connection with the proceedings covered by his appointment any act or thing, or give any consent, or receive any notice, or otherwise represent the party appointing him as fully as the party himself could do.

But, unless the applicant is thoroughly well versed in railway law and possessed of some forensic ability, it is perhaps wiser to employ legal aid, or the advice and assistance of an expert in these matters.

## HOW UNCLASSIFIED ARTICLES ARE DEALT WITH.

On the other hand, suppose that the manufacturer, or his traffic manager, whose duty it is to look after these things for him, does not do this—does not look ahead and secure the proper placement of his products in the railway classification—what then? Well, what will happen is just this: the article will be included in the list of unclassified articles and charged in accordance with the following entry in the revised classification, which has been approved by the Railway Rates Tribunal—

Any merchandise or article not specified in this classification, and all merchandise the name of which is not shown on the consignment note, to be charged at Class 20.

## SOME CLASSIFICATION TEST CASES.

The following are the leading test cases in connection with the classification of goods. These cannot fail to be of special interest and use to the reader at this point.

**The Classification of Virol : Bovril Ltd. and Virol Ltd. v. Great Western Railway Company.** This was an application under Section 24 of the Railway and Canal Traffic Act, 1888. The applicants complained that since an Order of the Board of Trade in 1902, assigning to Class 5 of the classification of merchandise traffic "extracts and essences for human food" they had been charged by the respondent railway company at a higher rate for the carriage of their food known as "Virol," which was formerly charged under Class 3 of the said classification. They contended that it was in no sense an "extract or essence for human food." They furnished particulars of its ingredients as follows—

Malt extract	.	.	.	.	.
Lemon syrup	.	.	.	.	.
Animal fat	.	.	.	.	.
Eggs	.	.	.	.	.
Glycerine	.	.	.	.	.
Salt and flavourings	.	.	.	.	.

Counsel for the applicants explained that the first two ingredients were classified already under Classes 4 and 5 respectively; the other ingredients were in no sense extracts; and the whole was a compound food.

For the Great Western Railway Company it was argued that the preparation was not a natural product, but a concentrated product prepared for human food, which was costly in relation to its bulk, and was an "extract" or "essence" in a business sense.

Bigham, J., in delivering judgment, said: "It is said in this case that the question which we have to determine is a question of law. I regard it as a question of fact. The conclusion that we have unanimously arrived at is, that this article is not properly describable as an 'extract' or an 'essence,' and that it is, in fact, better described as a mixture of different component parts. As it does not, therefore, clearly come within the expression used in the new Order, we think that the railway company must carry it as heretofore, under the provisions of Class 3, as being an unclassified article." (12, R. & C.C., 151.)

**The Classification of Flaked Maize : White, Tompkins and**



**Courage, Ltd. v. London and North Western Railway Co.** This was an application under Section 1 of the Railway and Canal Traffic Act, 1894, praying for a declaration of the Court that the increase in rate on flaked maize, indirectly made by altering its place in the Railway Clearing House Classification from Class C to Class 1, was unreasonable. It was stated that the applicants represented all the manufacturers of this product, and that all other railway companies had undertaken to be bound by the decision in this case. According to the evidence given on behalf of the defendants, flaked maize is a preparation of maize, by which the germinating core, the husks, and the greater part of the oil are first extracted; the remainder is next broken up into fragments, known as maize grit, and lastly, the maize grit, heated and moistened, is pressed under rollers and becomes flaked maize. By this process the walls of the cells in which the starch granules are contained become broken down, and the action of the malt used in brewing changes the starch into a fermentable sugar, which, in turn, acts upon the beer and produces to a great extent the results obtained from the use of glucose. The use of glucose is thus in some degree superseded. At the date of the passing of the statutory classification in 1891-92 flaked maize was scarcely known as a commercial article; such consignments as were forwarded were declared as "maize," but later on the companies inserted the article in the Clearing House Classification, grouping it with "Maize" under the general heading of "Grain." Recently, under representations from the glucose manufacturers that the articles were competitive and that they were unduly prejudiced by the lower rates quoted for flaked maize, the companies determined to increase them. A formal notice of increase of rate was published, taking the form of an announcement that flaked maize would be removed from Class C to Class 1 of the classification. It was contended by the officials of different companies that, inasmuch as flaked maize was unenumerated in the statutory classification, and since unenumerated articles were chargeable at the rates for Class 3 traffic, it was open to them to place it in their working classification either in Class 3 or in any other for which the rates would be lower, and that, considering its much greater bulk and higher value, it was reasonable to place it, as they had done, in the class one step above that allotted for grain.

The Court, after some discussion as to the procedure due to be followed when rates were raised upon articles not distinctly enumerated in the classification, intimated that it was not prepared to determine the different legal points raised, since, in any case, the onus of proof lay upon the defendants to justify the increase. Upon the question of reasonableness of rate, the companies had relied almost entirely upon the view that the trade in glucose was prejudiced by the low rates for flaked maize, and the Court had come to the conclusion that this was not the fact. This being so, the Court held that the defendants had not discharged the onus of proof and had failed to satisfy the Court that the increase made was reasonable. This decision would not prevent the companies bringing forward evidence of a different character, should the case be presented to the Court in another aspect in any future proceedings.—(*The Times*, 15th Feb., 1906.)

**The Classification of Bananas:** *Ex parte* London and North Western Railway Co. On 2nd Apr., 1909, in the King's Bench Division, counsel moved *ex parte* on behalf of the London and North Western Railway Co. for a writ of prohibition, and also for a writ of *certiorari*, directed to the Board of Trade, prohibiting it from making an Order amending the present classification of merchandise traffic, and to bring up and quash the Order if it were made.

It appeared that a certain firm of banana merchants made an application to the Board of Trade for the inclusion in the Railway Classification of an entry in Class 1 as follows: "Unripe bananas, loose; minimum, 20 cwt. per wagon."

Mr. Macassey, for the railway company, contended that these were already included in Class 2, under the general word "Fruit," and that the Board of Trade had no jurisdiction to make the Order. The merchants desired the transfer to Class 1 because they would then have the benefit of a lower rate. The object of this motion, counsel declared, was to test the power of the Board of Trade to transfer an article from one class to another. The classification had been made, Mr. Macassey further explained, under the powers conferred by Section 24, Sub-Sections 3 and 8 of the Railway and Canal Traffic Act, 1888, after all the parties had been heard, and Parliament had then dealt with the matter by confirming the Provisional Order of the Board in the Act of 1891, and it was

not intended that the Board of Trade should have the power to alter the classification so confirmed. All it could do was to add any new article—for example, aeroplanes—to one of the classes already established. Even assuming that these bananas were a new article not already included in the established classes, and that the Board of Trade could place them in Class 1, he submitted that it had no power to add the two qualifications, “loose” and “minimum 20 cwt. per wagon.” If the Order were made the railway company would be forced to accept unripe bananas loose, although unwilling to do so. The existence or non-existence of this power in the Board of Trade was a matter of the very greatest importance to all the railway companies, concluded counsel.

Mr. Justice Jelf, in giving judgment, said—

“This was a motion for two rules, one for a *certiorari* to bring up an order of the Board of Trade, and the other for a prohibition to prohibit the Board from making such an order. It was not alleged in the affidavit that there was in existence any such decision as it was sought to bring up, and he believed he was right in saying that it was an invariable rule that before a rule for a *certiorari* could be granted it must be clear that there was a determination in existence to be brought up. An applicant could not have a rule *quia timet*. That, therefore, disposed of that rule. With regard to the prohibition, undoubtedly if they could see their way to decide that a *prima facie* case had been made out that the Board of Trade had gone beyond their jurisdiction, they would be bound to grant the rule. But, although the matter had been ably brought before them by Mr. Macassey, they failed to see that a *prima facie* case had been made out. The matter turned on Section 24, Sub-section 11, of the Railway and Canal Traffic Act, 1888. Under other Sub-sections of Section 24 the Board of Trade had made a classification of eight different classes of merchandise, and had made a provisional order embodying this classification, which was confirmed by an Act of Parliament passed in 1891. The classification depended, he supposed, on the value of the goods to the merchant, and to the care and responsibility imposed by the carriage thereof on the railway companies. Sub-section 11 of Section 24 provided for cases not covered by the classifications, i.e. new cases which might arise with regard to articles of merchandise either not known at the time when the classification was made or to articles so little known or carried at that date that *per incuriam* they had not been provided for. The power of amendment given was not a general power, but one specified in the Sub-section itself. He did not think that the Board of Trade had the power to transfer an article already included in the classification from one class to another, but it had the power to add a new article to one of the classes thereof.

“In the present case certain traders who had up to this time been paying rates charged under Class 2 of the classification had asked for an order as to unripe bananas for their insertion in Class 1 under certain

conditions as being articles not already included in the classification. The Court had to see, first, whether these bananas were already included, in which case the Board of Trade could not make the order; and, secondly, whether, if not already included, and the Board had power to insert them, they had jurisdiction to add the qualifications, 'loose, minimum 20 cwt. per wagon.' As to the first point, he did not see that these bananas were already included. It was suggested that they were included under the word 'fruit.' In his opinion, 'fruit' only covered the particular fruits specified after the dash which followed it; and among those unripe bananas did not appear, and there was nothing which would cover them, although ripe fruit was dealt with. Then, as to the second point, Mr. Macassey contended that, assuming the bananas to be new articles, and assuming the power of the Board of Trade to insert them in Class 1, they had no power to add the qualifications. He objected that the qualification 'loose' would make the companies undertake a greater liability than they were under before. But under Sub-section 11 the Board of Trade could 'classify and deal with the articles, matters, or things referred to therein in such manner as the Board of Trade shall think right.' Those words covered this point, and gave the Board the power to add these qualifications. He might have taken a different course as to granting this rule were it not for the existence of the Court of Appeal, to which Mr. Macassey might have recourse, so that their decision did not finally close the matter. But they did not think it right to grant a rule, and thus involve the attendance of the law officers, and probably great expense, unless they thought a *prima facie* case had been made out; and, after patiently hearing argument, and argument on one side only, they did not think such a case had been made out. The rules must be refused." (1909. 100 L.T. 998.)

**The Classification of Metal Polish: North Eastern Railway Co. v. Reckitt and Sons, Ltd.** This was an application to the Court under the Act of 1888 in a dispute which had arisen between the railway company and the defendants, who were manufacturers of liquid metal polish, as to the rate or charge which the railway company was entitled to make for the conveyance of parcels of metal polish over its line, and the facts of the case appear in the judgment of Mr. Justice Bankes, which was as follows: "It was said that the case was of importance to railway companies generally, and that the application was, in fact, made on behalf of a number of railway companies, but the only question which the Court could decide on the present application was the dispute which had arisen between the North Eastern Railway Co. and Messrs. Reckitt and Sons, Ltd., though no doubt the decision of the Court would have a direct bearing on many other cases. The defendants applied to the Board of Trade to amend the classification by adding to Class 2 liquid metal polish having a flash point of over 73 degrees



Fahr. in securely closed tins or cases. The railway company objected to the Board of Trade dealing with the application on the ground that the article having been treated by them as 'dangerous goods' within the meaning of Part 4 of the Rates and Charges Orders could not be removed by the Board of Trade. This objection having been taken, the parties decided to apply to the Court for a decision as to whether liquid metal polish was "dangerous goods" within the meaning of Part 4, and applicants asked for an Order that liquid metal polish having a flash point of over 73 degrees Fahr. was 'dangerous goods' within the meaning of the Act, and that the legal rate which they could charge for conveyance of the polish, however consigned or packed, was such reasonable sum as they might think fit in each case. It was proved that the polish was contained in metal cases well designed and constructed, and the evidence was not sufficiently definite to show that any amount of handling would cause an escape of the contents. It was proved that the flash point was between 80 and 83 degrees. The right of the railway company to say that the goods were dangerous rested upon the provisions of the Act, and it had not been suggested that its action was not *bona fide*. He had come to the conclusion that the action of the railway company was not only *bona fide*, but that it was exercised on reasonable grounds. The result of the action of the company had been that since liquid metal polish had been on the market it had been treated as 'dangerous goods,' and accepted for carriage only as such. Then arose the question, what was the meaning of 'dangerous goods' within Part 4? For the defendants it was said it meant goods dangerous to carry, while the company said that, even assuming this to be the correct view, the polish was in fact 'dangerous goods.' The Act contained no definition of 'dangerous,' and there was nothing to limit the power of the plaintiffs under Section 105 of the Act of 1845, and the Legislature must be taken to have been aware of the power conferred by the Act at the time Part 4 was framed. The decision the Court was asked to come to by the defendants would have a very serious effect as the result of the insertion by Parliament of dangerous goods within the classification, as the Court was asked to say that liquid metal polishes were not dangerous goods, and to do so would be to deprive railway companies of the discretion given to them by the Act of 1845. He could not adopt



the construction contended for by defendants, but this conclusion did not leave defendants without remedy, as it merely shifted the decision as to what was a reasonable charge for the carriage of such goods from the Board of Trade to a Court of Law which would be entitled to consider all the circumstances, including the degree of danger in the carriage of the goods. This conclusion was sufficient to dispose of the case, but upon the evidence already given he was inclined to go further and hold that these goods were dangerous, especially in case of collision or fire. The judgment of the Court would be limited to a declaration that liquid metal polish having a flash point over 73 degrees Fahr. in securely closed tins or cases was 'dangerous goods.' "

The Hon. Gathorne Hardy gave judgment to the same effect.

Sir James Woodhouse thought metal polishes were not dangerous articles for railway companies to carry as articles of merchandise, and that the real test of safety was that given by Professor Redwood as the point of ignition. The charge made was for carriage, not for warehousing; the polish was in securely closed tins and had been carried in enormous quantities for many years in wagons in which other goods were carried, and there was no evidence of any danger having arisen. Insurance companies treated the risk as an ordinary one and did not charge an extra premium. In view of these facts he thought the polish might be carried as an ordinary article of commerce, but as under the Act the company had power to carry only such goods as it considered not to be dangerous, and there being no suggestion that it was not acting *bona fide* and in good faith, he agreed that applicants were entitled to the Order asked for. (*R. and C.T.C.*, Vol. XV—137.)

**The Classification of "Scrap Files" and "Propeller Shafting":**  
**Ward Limited v. Midland Railway Co.** This case raised the point as to the rates to be charged for the carriage of "scrap files" and "propeller shafting" removed from ships, and both of which were consigned as "scrap." The applicants purchased the files as scrap, and sold many of them again for export. They also dealt in propeller shafting, and removing them from ships took them to their yards and again dealt with them. The point at issue was: What was the class in the statutory classification which comprised that article? Applicants' case was that these articles were included under the articles to be carried under the class of iron and steel

scrap, and that they were entitled to have them carried at the rates under this class. Applicants contended that these files had deteriorated by use or were worn out, or had ceased to be useful for the purpose for which they were used, and were thrown on to the scrap heap, and that as they were scrap within the meaning of the word they were entitled to have them carried by the railway company at scrap rate. The railway company submitted that as both the articles were afterwards dealt in commercially by the applicants and sold again as a commercial article, they were not scrap and not entitled to be carried at the scrap rate.

The Court held that these files and shafting were scrap, and were entitled to be carried as such. The applicants were entitled to have the files carried by the railway company to their works and outwards for export as scrap, and the applicants were right in both cases, and were entitled to a declaration accordingly.

Mr. Justice Lush, in the course of his judgment, said the applicants sought relief against the charges of the railway company made for carriage of large quantities of scrap files and propeller shafting. The real question to be decided by the Court was: Do these articles in question come under the description of scrap files and scrap shafting? The company's contention was that the files were old files, and the shafting old shafting, and should be charged at that rate. The applicants, on the other hand, said as to the files they were scrap steel and not files at all, and as to the shafting that it was also scrap. From the evidence it was clear that these articles were sold as scrap, and that the files were actually thrown on to the scrap heap. Having arrived at the conclusion that they had power to determine the question, his Lordship said the Court were of opinion that the applicants were entitled to the declaration. As to the propeller shafts, his Lordship said the applicants purchased these as disused shafts—as worn-out and no longer serviceable, and scrap rates also applied in this case.

The Hon. A. E. Gathorne Hardy and Sir James Woodhouse concurred. (*L.T.R.* 33—4.)

**The Classification of Frozen Salmon: *Midland Railway Co. v. Warner, Sons & Co.*** Shortly put, the facts of this case were these: Certain frozen salmon and frozen halibut from Canada, packed in boxes, was carried by the Midland Railway Co. Before being

dispatched to England the fish was frozen hard, and each fish or piece of fish was wrapped, first, in two sheets of grease-proof paper and also in brown paper. Each parcel was then put into a thick paper bag and was packed with other similar parcels in a strong wooden case, lined inside with bituminous card. The question was whether they were to be carried at the rate applicable to goods in Class 2, or Class 3, or Class 4 of the schedule of classification of merchandise traffic, embodied in the Midland Railway Co. (Rates and Charges) Orders, 1891. Class 2 applies to "preserves (fish, fruit, meat and provisions) in casks, boxes or cases." Class 3 to "Fish, fresh, except otherwise herein provided." Class 4 to "Fish, fresh—Brill, grayling, lobsters, oysters, prawns, red mullet, salmon, smelt, soles, trout, turbot, whitebait." The Division Court (Lush and Bailhache, JJ.), affirming the County Court Judge, held that the goods came within Class 2. The Midland Railway Co. appealed, when the following judgments were delivered.

Swinfen Eady, L.J.: "This is an appeal from the Divisional Court affirming a judgment of the learned judge of the County Court, and the point raised is short, but by no means free from difficulty. The question is: Within which class, for the purpose of railway charges, salmon imported from Alaska and British Columbia, frozen and coming forward in a frozen state, should be classified.

"Before the learned County Court judge, the actual method of packing was described by Mr. Warner, who said that the salmon in question comes from Alaska and British Columbia. He said: 'This fish is perfectly hard frozen when it reaches us. It is packed in wooden cases, wrapped in a number of paper wrappers, each fish or piece of fish being separately wrapped in two sheets of grease-proof paper and also in brown paper.' Then, 'a thick paper bag encloses the fish and each piece of fish separately. The case itself is lined inside with bituminous card. There are holes at each end of the case for corks, when the case is not in a cold storage chamber. The corks are in the holes when the cases reach us. Corks are  $2\frac{1}{2}$  ins. to 3 ins. in diameter. It must be some weeks old before it reaches Liverpool'—that is the fish—and then 'we buy the fish from importers who consign the fish to us.'

"That is the state and condition in which the fish is sent forward, and it is sold here on arrival. The first question raised by the

appellants, the railway company, was this. They contended that this fish was fresh fish, salmon coming under Class 4, where certain classes of fresh fish, which includes salmon, are classified. In my opinion the fish so preserved cannot be called fresh fish. It is fish which, by reason of the freezing or refrigerating process to which it is subjected, has been preserved from decay, but it cannot be called fresh fish. Then the next question is whether it comes within Class 2, which is 'Preserves—fish, fruit, meat, and provisions, in casks, boxes, or cases.' It was said that this fish, coming inside a strong wooden case comes within Class 2 as 'Preserves—fish in cases.' It will be noticed that the classification of goods includes in Class 1 fish preserved by, I think, almost every other method than refrigerating or freezing; for instance, fish that is dried, that is cured in brine, and, as regards red herrings, thoroughly cured. All such fish preserved in that manner comes within Class 1, so that the classification 'Preserves, fish,' etc., is obviously not intended to include fish preserved in any of those methods.

"Now can it be said that, under a heading of 'Preserves,' although extending to fish, fruit, and provisions, a whole salmon so frozen is properly included? In my opinion this heading in Class 2 of 'Preserves in casks, boxes, or cases' does not extend to and include a preserved fish—that is to say, a fish preserved by the freezing process. 'Preserves' is not a term properly applicable to such a fish. The best conclusion that I can arrive at, although the matter is not free from doubt, is that this is a fish preserved in a manner not provided for in the detailed classification, and therefore the effect is that it is covered by Class 20 of the schedule, and is to be included in Class 3 until it is duly added to the detailed classification.

"For those reasons I am of opinion that it is not in Class 4 as 'fresh fish,' and it is not in Class 2 as 'preserves,' but it is a fish preserved in a manner not mentioned in the classification, and was unclassified, and should be properly dealt with according to the rates in Class 3. The order below should be altered to that extent, and, as the parties have agreed about the costs, there will be no costs of the appeal."

Bankes, L.J.: "I quite agree. This is a very short, and from some points of view, a very simple point. But at the same time there is very considerable difficulty in placing a meaning that one



can feel sure about on many of the expressions in this classification. There are two points which have to be decided : first of all, whether this is fresh fish within the meaning of the language of Class 4, which speaks of fresh fish, including amongst fresh fish, salmon. There are a great many senses in which you may use the word 'fresh' as applied to fish. You may use it as opposed to stinking fish, but that is obviously not the meaning in which it is applied here, because if a person bought a fish and allowed it to get into a condition which was otherwise than fresh, and desired to send it by railway, if they took it at all it would go as fresh salmon. I suppose that would be the ordinary meaning of it, but we have to consider the meaning of it as applied to this very special article—that is, a salmon which has been brought thousands of miles away from Alaska, and which has been frozen stiff and packed in a particular way so as to maintain it in a frozen condition until it arrives, and then it has to be defrozen, if I may use the expression, before it is exposed for sale, or, at any rate, before it is used, and in my opinion the word 'fresh' is not properly applied to a salmon in that state. Then the question is whether not being fresh fish, it is 'preserves,' and the question, it seems to me, is whether the word 'preserves,' as used throughout this classification when speaking in reference to fish, is a reference to a preserved fish or only a reference to preserves of fish. Again there is some difficulty about this, and the conclusion I have come to is that the classification speaks of preserves of these different articles. That means to say something that has gone through some treatment or process which has to some extent changed its original character, and I think one thing which has led me to come to that conclusion is the description of fish in Class 1, where it speaks of dried and cured and salted fish, and it puts them into a class under that particular description. If the contention that prevailed in the Court below is correct, they are also 'preserves (fish)' and if that codling or herrings, or whatever it might be, was put into a case or a cask or a crate, they would then come into a different class, because they would come under the heading of 'preserves (fish) in casks,' etc. I do not think that could be the intention when this classification was drawn, and in my opinion this appeal ought to be allowed on the point that this particular article is not classified at all, and therefore comes under Section 20."



Bray, J. : " The first contention of the railway company here is that this is fresh salmon. I feel quite clear that it is not. We have the advantage of the evidence of a fishmonger who says that frozen fish would always be sold as frozen fish. In other words, it would not be sold as fresh salmon, and he speaks of it in ordinary parlance as frozen salmon. Fresh salmon, in my opinion, would be a wrong description.

" As to the other point, I have a great deal of difficulty, and I cannot say I am very confident in the opinion I have arrived at, but I do not feel sufficient doubt to differ from my brothers on that point. The choice seems to be between two classes : ' Preserves ' may mean things preserved, and the things are specified, namely, fish, meat, etc. In other words, it would mean that this description includes a preserved fish. If that were so, I should say this was a preserved fish, but that is not the word used. The word ' preserves ' has been used. The natural meaning of the word ' preserve ' in connection with anything of this kind would be jam. No doubt jam goes through a course of treatment ; and of these two interpretations I think perhaps the latter is the more probable, and therefore I agree on the whole that this appeal should be allowed to the extent that has been mentioned."

Appeal allowed.—(*L.T.*, Vol CXVI—664.)

**The Classification of Cylinders or "Reservoirs" : *Stewart & Lloyd v. London and North-Western Railway, Great Western and Midland Railway Cos.*** The facts of this case are fully stated in the judgment of Mr. Justice Lush, who said that the applicants were manufacturers, in a large way of business, of iron and steel tubes and other articles. They had, for many years, also manufactured cylinders or "reservoirs," made from tubes, strongly welded and closed at both ends. They were used, among other purposes, for storing compressed air. The applicants had supplied these reservoirs to railway companies and other purchasers. They were always invoiced and sold as "reservoirs." For thirty years or more the applicants had consigned these reservoirs by railways under the description of "tubes," and the railway companies, treating them as tubes, until recently carried them at Class "C" rates. The entry in the classification for tubes was, "tubes and fittings for tubes, except electro-coppered or coated with brass," Class C.

In 1911 the Great Western Railway, which had received only one

or two consignments of these goods for carriage, discovered that they were not tubes, open at both ends, but "reservoirs." After investigation, that company and the other defendant companies refused to carry them as tubes at Class C rates, and insisted that the rate which was applicable was either Class 2, which applied to "gas tanks," or Class 3, which applied to unclassified articles. They were willing to treat them as "gas tanks," and charged Class 2 rates accordingly. The applicants refused to pay more than the Class C rate and in their accounts deducted the difference. They ultimately commenced these proceedings in 1915, alleging that the articles were tubes within the meaning of the railway classification, and that the railway companies, having knowingly carried them so long a period, and now claiming to be paid a higher rate, had increased their rates or charges, and that such increase was illegal (as no notices had been published) and also unreasonable. The railway companies, on the other hand, contended that the articles were not tubes, that they were entitled to charge the higher rate, and that the lower, Class C, rate having been charged by them inadvertently, and in ignorance as to the true character of the goods, there had been no increase of a rate or charge. The Court had already held that the articles were not tubes but reservoirs.

On the question of the fact, he felt no doubt that the applicants' contention failed. They altogether failed to prove knowledge on the part of the railway companies, who established, quite clearly, that they had no ground for supposing, and had no knowledge, in fact, that the goods had been misdescribed. The quantity of reservoirs consigned and carried by the companies was trifling compared to the quantity of tubes, the proportion being not substantially more than 1 per cent. It would be very easy to mistake a "reservoir" for a tube. A clerk or servant engaged in handling the traffic might have noticed that some were welded, and were not opened at both ends, but to prove approval and knowledge it must be shown that some responsible official of the company knew and approved. The clerk or servant would have no authority to assent to a lower rate being charged than that which was properly chargeable. No inference could be drawn against the company as to their willingness to accept a too low rate from the knowledge of an irresponsible servant. So far as

the companies were concerned, he was satisfied that what was done was done inadvertently.

But applicants further contended that even if the company did not "know," yet, as the lower rate had been charged for so long a period and some servants of the company must have known what they were, the companies could not charge the higher rate without increasing their rate or charge, and that such increase was unreasonable within Section 1 of the Railway and Canal Traffic Act, 1894. In his Lordship's opinion, this contention wholly failed. There had been no increase of a rate or charge at all. The respondents had charged no more for tubes than they did before. Nor had they claimed to charge more for reservoirs or tanks. They only claimed to rectify a mistake, merely caused by the error of the applicants in calling what was a reservoir a tube. They found out for the first time in 1911 or 1912 what it was that they were asked to carry and then, for the first time, charged the appropriate rates. The length of time during which the mistake continued could not alter the nature of their act. It might, however, raise the presumption against the carrying companies that they knew what they were doing, and might place upon the companies an onus which would otherwise be on the applicants.

There was a misconception underlying the applicants' contention that a railway company were not entitled to rectify any mistake of this nature after it had continued for a long period. The reason why they might not be entitled to charge the higher rate, although it might be the appropriate rate to charge, if they had, with knowledge of all the facts charged a lower and different rate, without justifying the increase, was that it might be a proper inference to draw that they either contracted with a particular trader to carry goods of that nature and treat them as falling within a particular class in the classification, or that they held themselves out to traders generally as placing them in that class. A contract with a particular trader or a notification to all traders might be proved expressly or by implication. But it must be proved that they had done either one or the other, and it was for the applicants to prove it. And knowledge on the part of responsible officials who were in a position to bind the company was an essential part of the proofs. It could not be suggested that there was any estoppel which precluded the companies from proving the true facts.

There was no representation by the companies on which the applicants were intended to act and did act. The incorrect representation as to the nature of the goods was by the applicants. It was made in good faith, no doubt—*mala fides* was not suggested—but it was none the less an inaccurate or wrong representation. Moreover, there could be no estoppel if the true facts were not disclosed. (*Doey v. London and North-Western Railway*, 1919, 1 K.B. 623.)

One or two cases had been cited; the first was *Beesley & Co., Ltd., v. Midland Railway*, 15 R. and C., 306. There knowledge on the part of the company was proved, so it did not assist the applicants. The next two cases were *Beeston Foundry Co. v. Midland Railway*, 14 R. and C.C. 119, and the case of *White, Tompkins and Courage v. London and North-Western Railway*. No actual judgment was delivered in the latter of these two cases, and it was difficult to gather precisely whether knowledge was proved or assumed or not. It seemed that knowledge was assumed in the Beeston case. The facts were different from those in this case and the point as to knowledge did not seem to have been really pressed. The last case was *Ward v. Midland Railway Co.*, 33 L.T.R. 4, and in the Court of Appeal, 1917, 2 K.B. 278, where knowledge was treated as an essential factor in the case. These authorities laid down this same principle as that which he had stated. If the Beeston case and the case of *White, Tompkins v. London and North-Western Railway* laid down a different principle, then they were inconsistent with the other two cases he had mentioned, and he did not think the Court ought to follow them.

The application, therefore, failed, and the defendants must have judgment entered for them on the claim and on the counterclaim.

Lord Terrington and Mr. Tindall Atkinson, K.C., concurred.

## CHAPTER III

### HOW TO CONSIGN : BY GOODS TRAIN

WE have now considered how goods should be packed for conveyance by railway and how to get them properly classified in order that reasonable rates may be applied to them ; next we have to consider how they should be consigned.

### RAILWAY COMPANY'S DUTY TO RECEIVE GOODS.

In passing, it will be well to point out that a railway company is bound by both statutory and common law to carry such goods as are handed to it for conveyance in a fit and proper condition and at a reasonable hour. Thus, in *Garton v. Bristol and Exeter Railway Co.* (30 *L.J.Q.B.* at pp. 292 and 293), Chief Justice Cockburn said : " I do not see that there is any distinction between railway companies and the ordinary common carriers. I think that where a company have opened the line, and have put carriages upon it, it is no longer optional with them to say ' we will or will not carry goods which are brought to us,' if those goods are brought at reasonable times and a proper amount is tendered for the carriage." Whilst in *Dickson v. Great Northern Railway Co.* (18 *Q.B.D.* 176 ; 56 *L.J.Q.B.* 111), Lindley, L.J., said : " There are few enactments which, in plain and distinct terms, impose upon railway companies the duty of carrying any particular things. They are bound to carry troops (7 & 8 Vict. c. 85, s. 12) and mails (36 & 37 Vict. c. 48, s. 18), but until the passing of the Railway and Canal Traffic Act, 1854, the duty of railway companies to carry any particular class of goods depended upon whether they did or did not profess to carry such goods as common carriers. The Railway Clauses Consolidation Act, 1845, did not impose on railway companies any duty to carry goods of which they were not common carriers by reason of their own conduct and profession. This was decided by *Johnson v. Midland Railway Co.* (4 *Exch.* 367), and was recognized as clear and settled law by Vice-Chancellor Wood in *Hare v. London and North Western Railway Co.* (2 *J. & H.* 80).

" The Railway and Canal Traffic Act, 1854, materially altered



the law in this respect, for it enacts, by Section 2, that every railway company shall afford all reasonable facilities for receiving, forwarding, and delivering traffic; and by Section 1 the word 'traffic' includes passengers and their luggage, and goods, animals, and other things. This Act imposes on railway companies the duty to afford reasonable facilities for carrying all passengers, goods, and animals. There may be an exception in the case of specially dangerous goods (see the Railways Clauses Consolidation Act, 1845, s. 105), but these are not now in question. The duty thus imposed on railway companies is inconsistent with their right to refuse any particular class of goods or animals which they have facilities for carrying, and is inconsistent with their right to refuse to carry such goods or animals except upon terms which are unreasonable. The machinery for enforcing this duty is provided by the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), to which it is unnecessary to allude further on the present occasion. The important point is that railway companies are bound to carry goods and animals which they have facilities for carrying."

#### OFFICIAL FORMS NEED NOT BE USED.

Now, although by Section 98 of the Railway Clauses Act, 1845, it is provided that "every person being the owner or having the care of any carriage of goods passing or being upon the railway shall, on demand, give to the collector of tolls, at the places where he attends for the purpose of receiving goods or of collecting tolls for the part of the railway on which such carriage or goods may have travelled, or be about to travel, an exact account in writing, signed by him, of the number or quantity of goods conveyed by any such carriage, and of the point on the railway from which such carriage of goods have set out, or are about to be set out, and at what point the same are intended to be unloaded or taken off the railway," yet Chief Justice Cockburn, in the case of *Garton v. Bristol and Exeter Railway Co.* (30 L.J.Q.B. 273) made it quite clear that a consignment note as provided by the railway companies need not necessarily be used. He said: "I take it that the law with respect to the obligation entered into by persons holding themselves out to the world as common carriers is clear; namely, that it is their duty to carry for any person who tenders to them the proper charge, all goods which they have convenience for carrying, and

in respect of which they hold themselves out as carriers, without subjecting that person to the liability of signing a note containing an unreasonable condition."

See also the case of *Midland Railway Co. v. Kidston & Co.* (reported in full on page 40), where the railway company's counsel admitted that "they could not make the traders sign any consignment note unless they wanted the goods at owner's risk rates." But, bear in mind, the "Standard Terms and Conditions of Carriage of Merchandise," as settled by the Railway Rates Tribunal in accordance with Section 42 of the Railways Act, 1921, provide that "Every consignment . . . shall be accompanied by a consignment note."

A good many firms provide their own consignment notes; some are written by hand, others are included in the invoice set and are typewritten on the invoicing or billing machines (so that, by the way, if a railway company insisted on one particular firm using the stereotyped forms whilst it allowed another firm to use a different kind, the company could be proceeded against for giving undue preference contrary to law—in *Baxendale v. Bristol and Exeter Railway Co.*, for example, it was held that "It is an undue preference for a company to refuse to receive goods for independent carriers, unless they have signed, or caused to be signed, conditions which the company do not require to be signed by persons delivering goods to the company's own carrying agents"); but here we will concern ourselves chiefly with the ordinary railway consignment note. A specimen is given on the accompanying inset and the remarks made in connection with this will, of course, be of general application.

A very interesting and important case arising out of the use of personal consignment notes is that of *Thomas Boag & Co. v. Cheshire Lines Committee*, referred to on page 160, which should be read in this connection.

### FILLING UP THE CONSIGNMENT NOTE.

We have already seen that a trader is compelled by both common law and the regulations recently approved by the Railway Rates Tribunal to address his goods fully and legibly, and obviously the full name and address of the consignee should be clearly set forth on the consignment note, so that they can be—as they will be—

**CONSIGNMENT NOTE FOR THE CARRIAGE OF MERCHANDISE** (other than Dangerous Goods and Merchandise for which Terms and Conditions are specially provided) **BY MERCHANDISE TRAIN** subject to the Standard Terms and Conditions of Carriage.

To the London Midland and Scottish Railway Company..... Station..... 19

In certain instances alternative Company's Risk and Owner's Risk rates are available. In such cases state whether the Merchandise is to be carried at the Company's Risk rate or Owner's Risk rate

Traders are requested when consigning goods "Carriage Paid" to endorse the address labels or tallies attached to the goods "Carriage Paid" or "Carriage Paid Home."

Name of Company's Carman..... Van Number..... Received by..... Loaded by.....

State here if Carted by Sender.....





transferred thence to the railway company's " Way Bill " for the information and guidance of the various officials who will have to do with the conveyance of the consignment : the guard of the train by which it is forwarded, the checkers at the tranship and receiving stations, and the clerical staff at the other end, to mention only a few.

### WHY ACCURATE DESCRIPTION IS ESSENTIAL

It is also very necessary to describe accurately on the consignment note the exact number of packages forming the consignment and the contents of the packages, for this reason : different classes of goods are—as we have seen in Chapter I—chargeable at different rates and it is now the law that for " any merchandise the name of which is not shown on the consignment note," the railway company may charge Class 20. And in every case where the declaration of contents is not made, the companies charge for carriage at the highest rate, as this regulation entitles them to do.

Take a specific case and see how this works out. Assume that a seed merchant in London hands to the L. M. & S. Railway Co. in that town a consignment weighing, say, 1 cwt. 2 qrs., for conveyance to Glasgow, and describes it on the consignment note simply as " one bag." The railway company, acting in accordance with the aforementioned rule, thereupon calculates the charge at the twentieth class standard rate in this way : 1 cwt. 2 qrs. at 169s. 4d. per ton (" Smalls " scale)—13s. 8d.

But if the bag contained, say, hemp seed or mustard seed, and the fact was disclosed to the company at the time of forwarding, the thirteenth class rate would apply, and the calculation would then be as follows : 1 cwt. 2 qrs. at 74s. 10d. per ton (" Smalls " scale)—6s. 10d.

In other words, the sender's omission to disclose the nature of the goods would cost him 6s. 10d.

There are, in fact, a variety of different rates applicable to seeds, thus—

	<i>Class.</i>
Flax, not for sowing . . .	8
Hemp, Mustard . . .	13
Bird, Canary, Annotto. . .	16
Caraway, Coriander, Dill . .	18
E.O.H.P. . . . .	19

Nor is it sufficient, by the way, merely to describe the nature of



the goods contained in the parcel. The purpose for which the goods are to be used should also be stated, as different classes of goods are chargeable at different rates. Thus, there are several rates for the carriage of oil, among them being—

<i>Article.</i>	<i>Class.</i>
Oil, for lubricating machinery . . . . .	11
„ citronella . . . . .	16
„ lemon . . . . .	18

Hence it is not sufficient to describe the parcel simply as “one parcel (or case) of oil”; the precise nature of the oil (or whatever it may be) should be mentioned.

Here, placed side by side, are the respective charges on a  $1\frac{1}{2}$  cwt. parcel of the three different kinds of oil, conveyed from Glasgow to London, so that it may be seen at a glance how the charges vary according to the nature of the goods—

	<i>s.</i>	<i>d.</i>
1 case of castor oil, for lubricating purposes, chargeable at Class 11 i.e. 63s. 4d. . . . .	5	7
1 case of citronella oil, chargeable at Class 16, 96s. 10d. . . . .	8	2
1 case of lemon oil, chargeable at Class 18, i.e. 112s. 7d. . . . .	9	5

It pays, you see, to give the company a full and accurate description of the goods which one wishes them to carry, in further proof of which see the accompanying statement (page 32). Moreover, if an accurate description is not given and a loss takes place during transit, the company is sure to set up the plea that as it was not correctly informed as to the nature and quantity of the goods it was required to carry it is not liable for the loss, and this plea will be accepted by the Courts as a legitimate defence.

## DECLARATION NOT COMPULSORY.

Under the original Carriers Act, 1830, which limits the liability of the carrier in respect of certain valuable articles, e.g. gold and silver coin, precious stones, jewellery, watches, clocks, etc.—a carrier is entitled to know the nature and contents of any package handed to him for conveyance—if it contains any of the articles named in the Act—in order that the proper conveyance and insurance charges may be levied, and if a true and proper declaration be not made at the time of forwarding no liability rests with the carrier if a loss ensues. This was made quite clear in the case of *Baxendale v. Hart*, wherein it was said: “We think that the Act requires the person who sends the goods to take the first step

by giving that information to the carrier which he alone can give, and that if the sender does not take that first step, then he cannot maintain this action by the force of the first section, which expressly says that the carrier shall not be liable unless the declaration is made. Such declaration, when made, will lead to other consequences ; the carrier will know what he is to have more, according to the tariff which he has stuck up in his office ; if that sum is paid and the goods are lost, then of course he would be liable ; on the other hand, if he refuses to give a receipt as provided by the statute, or has omitted to comply with any provision of that kind on his part to be performed, he would lose the protection given by the Act ; but in no case can the sender recover unless he has taken the first step by giving the information which the Legislature intended he should give, as we think, in the very first instance."

But if a package does not contain any of the goods mentioned in the Carriers Act, or provided it does not enclose explosives or other dangerous goods—which latter must *in all cases* be fully and properly declared and are conveyed by special arrangement only—it is not compulsory for the senders to declare to the carrier the nature of the goods he wishes to forward. In the case of *Crouch v. London and North-Western Railway Co.* (1854, 23 L.J.C.P. at p. 81) Chief Justice Jervis said : " No authority has been cited to show that a carrier is entitled in every case to know the nature and quality of the goods tendered to him to be carried ; and, on looking at the other provisions of the Act of Parliament, there seems no reason why the defendants should make the inquiry. With reference to dangerous articles, they are entitled by the Act to know the nature and quality, and they must be disclosed to them at the time of the delivery ; and if the company suspect articles to be of a dangerous nature they may open the packages. So also with respect to goods of a peculiar value, provision is made by the Act ; if the value is not disclosed at the time of the delivery and payment in the nature of an insurance made accordingly, the liability of the carrier is limited, and the consignee, in the event of loss or damage, cannot, by reason of the concealment, recover the full value. In these respects, therefore, the carrier is protected by the law ; but even if it be reasonable under certain circumstances that he should be informed of the contents of the parcel, the plea should have stated that there was a reason on this



occasion for requiring the information. It is not alleged in the plea that there was a reason. The plea is founded on a general proposition, that in the case of all goods of whatever nature or quality sent to a common carrier, the person delivering them is bound to know, and be able to state if required, their nature and quality. Now, I think, if that be so, the consequences would be so highly inconvenient that we should require authority to support it."

So far as dangerous goods are concerned, it may be well perhaps to refer to the case of *Farrant v. Barnes* (31 L.J.C.P. 137; 11 C.B.N.S. 553), where the defendant caused a carboy containing nitric acid to be delivered to the plaintiff, who was one of the servants of a carrier, in order that it might be carried by such carrier for the defendant, and the defendant did not take reasonable care to make the plaintiff aware that the acid was dangerous, but only informed him that it was an acid, and the plaintiff was burnt and injured by reason of the carboy bursting whilst, in ignorance of its dangerous character, he was carrying it on his back from the carrier's cart; and it was held that the defendant was liable to the plaintiff in an action for damages for such injury.

Willes, J., in delivering judgment, said: "I apprehend that a person who gives a carrier goods of a dangerous character to carry, which require more caution in their carriage than ordinary merchandise, as without such caution they would be likely to injure the carrier and his servants, is bound in law to give notice of the dangerous character of such goods to the carrier, and that if he does not do so he is liable for the consequences of such omission. An illustration of this is when a person puts on board a vessel goods which are of a combustible and inflammatory nature, and therefore dangerous, and it is clear that such person is liable to anyone who is injured thereby, in consequence of the wrongful omission of such person to give notice of the dangerous character of such goods when he puts them on board. (*Brass v. Maitland*, 26 L.J.Q.B. 49; *Williams v. East India Co.*, 3 East, 192.) No doubt what the Court there laid down as to shipment on board a vessel, at least so far as concerns any criminal responsibility, may not apply to a case of goods sent by a carrier, as in the present case. The case of putting goods on board a ship is a very strong and almost an extreme case, but it may be used to test the principle; and I am of opinion that persons employing others to



carry dangerous articles are bound to give reasonable notice of the character of such articles, and are liable, if they do not do so, for the probable consequences of such neglect of duty."

And Keating, J., said: "It seems to me to be clear that a party who sends a dangerous material by a carrier is bound to give reasonable notice that it is dangerous. Without, however, defining the extent of such duty, I think it ought to go at least to the extent of including the plaintiff, because he was the person whom the defendant may be considered to have actually known was employed to carry the article, and to whom in fact it was delivered by the defendant to be carried."

### THE PENALTY FOR FALSE DECLARATION.

By the way, it is provided by Section 99 of the Railway Clauses Act, 1845, that "If he (the owner of goods) give a false account . . . with intent to avoid the payment of any tolls payable in respect thereof, he shall for every such offence forfeit to the company a sum not exceeding £10 for every ton of goods, or for any parcel not exceeding 1 cwt., and so in proportion for any less quantity of goods than 1 ton, or for any parcel exceeding 1 cwt. (as the case may be) which shall be upon any such carriage; and such penalty shall be in addition to the toll to which such goods may be liable."

There are cases on record of where traders have misdeclared their traffics with the object of getting an advantage in the matter of rates and charges, and have been fined very heavily for their deception. Thus, in the case of *London and North-Western Railway Co. v. Moring* (1905, 2 K.B. 113; 75 L. J. K.B. 540), the defendants took to the plaintiffs' goods station three cases of goods for conveyance by railway, and delivered to the company's servants consignment notes in which the goods were misdescribed by the defendants with the object of procuring the carriage of the goods at a lower rate than would have been charged if they had been correctly described. Here it was held that the defendants had committed an offence within Sections 98 and 99 of the Railways Clauses Act, 1845. In *General Electric Co. v. Evans* (1911, 105 L. 199), part of an electrical generator known as a "stator" was consigned by rail, being divided into two parts and packed in two cases. The consignment note described the goods as "bearers," to be sent at owner's risk, and they were charged for



as such. The rate for bearers at owner's risk for the transit in question was 9s. 2d. a ton, and the rate for generators in parts at company's risk was 22s. 9d. a ton. There was no rate in force for generators in parts at owner's risk. On a summons against the consignors under Section 99 of the Railways Clauses Act, 1845, for having given a false description of the goods with intent to avoid payment of the tolls payable in respect thereof, the justices convicted the consignors.

A serious case of misdeclaration came before the Stipendiary in Birmingham in September, 1915, in which Walter Clifford, manager for one William Cook, was summoned at the instance of the Great Western Railway Co. on six charges of making a misdeclaration as to the nature of goods consigned to firms in Bristol, Cardiff and Plymouth, on various dates between 29th July and 14th August.

In opening the case, counsel for the railway company explained that the proceedings were taken under the Railway Companies Consolidation Act, of 1845. To protect themselves from firms who falsely declared the character of their goods in order to obtain the benefit of a cheaper rate, the railway companies had from time to time been compelled to take active measures to enforce the proper rates and prosecute those who persistently resorted to the practice. Cases of misdeclaration were somewhat numerous in the Birmingham district, and up to the present time all efforts to stamp them out had failed. Firms correctly describing their goods were seriously handicapped by the fact that, having to pay higher carriage, they were not able to offer their goods at the same price as their competitors who misdeclared and so obtained a cheaper rate. The defendant firm had been warned on several occasions, and in April, 1914, they were told that if any further cases of misdeclaration were reported the companies would be obliged to take a serious view of the matter. The rate for castors, cabinet handles, and similar articles was higher than that for nails.

Evidence was given by the company's police, who spoke to examining the consignments in question. They were marked as "nails," whereas the boxes contained castors, castor runs, cabinet handles, etc., and the company had thereby been deprived of certain sums.

Counsel for the defendant pleaded guilty on behalf of his client, but said the misdeclaration was due to inadvertence brought about by the rush of business during these exceptional times.

The Stipendiary said it was a very serious matter, especially as there had been previous warning. He imposed a fine of £5, in each of the six cases, and also allowed £5 special costs.

In April, 1918, Messrs. Penrose & Co. were fined £20 with two guineas costs at Marylebone for sending collodion, a highly inflammable liquid, by the Great Western Railway Co., without distinctly marking the nature of the goods on the outside of the package, or giving notice of the fact in writing. Prosecuting counsel said the collodion was packed in two cases weighing  $1\frac{1}{2}$  cwts., and was consigned to Belfast as photo paint. As a matter of fact it was impossible to get this stuff to Ireland by ordinary means, as the Belfast Steamship Co. refused to carry any explosive or highly inflammable goods by their steamers. The magistrate suggested that the sender disguised what it was in order to get it carried and with this suggestion the railway company's counsel agreed. The result was, he added, that instead of being specially dealt with, it was treated as an ordinary parcel, and while one of the cases was being unloaded in Ireland it fell out of a sling and broke. That was how the offence was brought to light. Counsel for the defence pleaded guilty and pointed out that collodion was used in the manufacture of photographic negatives. The magistrate said it looked to him as if it was done deliberately, and imposed the fine stated.

### DECLARATION SOMETIMES DIFFICULT.

In fairness it must be confessed that it is not always an easy matter to decide what is the correct description to apply to one's traffic and under what heading in the General Railway Classification certain goods fall. Thus, suppose you have a parcel of posters for consignment by rail, on referring to the General Railway Classification you will find that there is only one entry therein referring to posters and this reads as follows: "Posters mounted on rough wooden frames, covered with common canvas, in bundles, . . . Class 18." And if your posters are not mounted but in sheets and folded, you will probably be uncertain as to how to describe the consignment. If you describe it on your consignment note merely as "posters" the railway invoicing clerk will in all probability charge you Class 18—as he would be entitled to do under such circumstances. But actually you would be entitled to consign the parcel as "printed matter, advertising," and then the Class 16 rate would apply.

## STATE THE WEIGHT.

Unless it has some special reason for refusing to do so, a railway company will gladly take the weight of a consignment if it is declared by the sender, because the declaration of the weight means a saving of time on the part of the staff, and therefore more expeditious handling of the traffic. In many cases the weight is unknown to the sender, but when he knows it he should give it in his own interests. Here are some examples to show how greatly the charges differ when the difference in weight is only a single pound—

<i>Cwts.</i>	<i>qrs.</i>	<i>lb.</i>		<i>s.</i>	<i>d.</i>
0	2	0	at 50s. per ton	2	0
0	2	1	(reckoned as 2. 14) at 50s. per ton	2	4
1	0	0	at 100s. per ton	5	11
1	0	1	(reckoned as 1. 0. 14) at 100s. per ton	6	7
1	2	0	at 150s. per ton	12	3
1	2	1	(reckoned at 1. 2. 14) at 150s. per ton	13	2
2	2	0	at 200s. per ton	26	0
2	2	1	(reckoned as 2. 2. 14) at 200s. per ton	27	3

In each of these cases the difference in weight is only 1 lb., but the difference in the charge is considerable. In the first instance it is 4d., in the second instance 8d., in the third instance 11d., and in the last instance the difference of 1 lb. in weight increases the cost of carriage by 1s. 3d. The explanation of this is, that "for a fraction of 14 lbs. in weight the company may charge as for 14 lbs. in weight," to quote the legal authority.

Here, by the way, is another case of misdeclaration—in this instance of the weight. At Stonehouse (Glos.) Petty Sessions, in 1917, a timber merchant of Stourbridge was summoned for under-declaring the weight of four consignments of pitwood forwarded by the Midland Railway from Dudbridge and Ryeford to Mansfield Woodhouse in May and September. The defendant pleaded guilty. Counsel for the railway company said that defendant purchased a plantation of timber in the Stonehouse district and consigned it to collieries for use as pitwood. The railway company were unable to measure and accepted his measurements. In the four cases in respect of which summonses had been issued the declared measurements amounted in the aggregate to 1,242 cubic feet, but defendant had charged the colliery company with and been paid for 1,649 cubic feet, the difference in weight amounting to 6 tons, 16 cwts.,

3 qrs. The total weight received by the consignee was 32 tons, and the maximum penalty was £320. Defendant's counsel said that he admitted responsibility but not personal culpability. The timber was measured by an employee who had not measured it correctly and this fact was not communicated to the railway company by defendant's clerical staff, which had been reduced to four, the eldest of whom was not yet of military age, and were working at full pressure. The defendant, who paid nearly £20,000 to various railway companies for carriage charges last year, was exceedingly busy and could not attend personally to all his business matters. His action throughout had been most honourable, and he had expressed his regret at what had occurred. A penalty of £200 was inflicted.

In the Pontypridd County Court on 23rd June, 1920, the Taff Vale Railway Co. sued the Riseligh Manufacturing Co. on four charges of giving false accounts of goods consigned. Counsel for the railway company said that the practice of the Taff Vale Railway Co. in common with other railway companies, was to accept the weight stated by traders on their consignment notes as correct, unless there were reasons for suspicion. Owing to a recent case at Cardiff the railway companies were now on their guard. They found that certain traders systematically under-declared the weight of goods consigned by them. On 13th March last defendants sent fifteen cases of flour to the Dowlais Co-operative Society. The weight declared on the consignment note by the defendants' manager was 10 cwts., for which the railway charge was 9s. 11d. The goods were weighed by the railway company and found to weigh 14 cwt. 1 qr. 18 lbs., and the correct railway charge was 14s. 4d. On the same day the defendants sent an invoice to the Dowlais Co-operative Society giving the weight of the flour, inclusive of the cases, at 12 cwts. 3 qrs. 12 lbs. The railway company's counsel said he had gone carefully into the 53 consignments of flour sent by the defendants between 15th March and 8th May. The total under-declaration of weight amounted to 5 tons 5 cwts. 2 qrs. 25 lbs., representing an under-declaration to the value of £9 5s. 2d.

Counsel for the defence said the defendants' manager had only given the approximate weight on the consignment note, being under the impression that the railway company weighed the goods and charged accordingly. In support of this contention he put



in an account from the railway company for November last in which they had corrected nine items out of fifteen.

The Stipendiary held that the cases were fully made out, and imposed maximum penalties amounting in all to £6.

### AS TO COMPUTED WEIGHTS.

In passing it may be pointed out once more that when consigning goods by railway the sender thereof is under a legal obligation to declare—among other things—the actual weight of the merchandise inclusive of packing, but for the sake of convenience, and to avoid the necessity for the repeated weighing of standard packages or quantities, a railway company will, by arrangement, agree to accept a “computed” weight. But it has to be carefully borne in mind that, although such an arrangement may be very convenient to both the senders of numerous consignments and to the railway companies, it is in no way binding on the carriers, and may be varied at any time if it is subsequently found to be inequitable as a basis for arriving at the carriage charges.

This was clearly established in *Joseph Watson & Sons v. Midland Railway Company* (13 R. & C.T.C. 339 (see page 256)), and *Holbrooks v. L. & N.W.R.* (16 R. & C.T.C. 154) to both of which cases the reader is referred for the Court’s views upon this subject.

### SAY AT WHOSE RISK GOODS ARE TO BE CARRIED.

Then the consignor has to consider whether he wishes the goods to be carried at the company’s risk or the owner’s risk. Here it may be briefly explained that there are two rates in operation for the carriage of many articles by railway—one known as the “Ordinary,” or “Company’s” risk, the other as the “Owner’s” risk rate—and the difference between the two is briefly this: Goods forwarded under the former conditions are conveyed solely at the risk of the railway company, and the company is responsible for whatever occurs during transit; but the lower, the owner’s risk rate, is granted only on the understanding that the consignor undertakes to relieve the railway company from all liability for loss, damage, misdelivery, delay, or detention, except upon proof that such damage, misdelivery, delay, or detention arose as the result of wilful misconduct on the part of the company’s servants. The trader has one great inducement to accept these conditions



and forward his goods at his own risk, and that is, he is thereby able to effect a considerable saving in his carriage account, as the owner's risk rates for goods by merchandise train are from  $2\frac{1}{2}$  to  $12\frac{1}{2}$  per cent lower than the company's risk rates; it all depends, of course, on the nature of the merchandise to which the rate is applied. It is easy enough at times to prove negligence, or even misconduct, but the difficulty lies in proving wilful misconduct.<sup>1</sup> Indeed, years of experience have proved that it is practically impossible for the trader to fulfil these conditions when a loss occurs. More of this anon, however. Meantime, definite instructions should always be given as to whether the parcel is to be carried at the company's risk or the owner's risk, as, in the absence of notification to the contrary, the higher rate is always charged, and a reduction in the charges will not afterwards be made.

In the City of London Court, on 10th July, 1917, before his Honour Judge Rentoul, K.C., a claim was made by the *Midland Railway Co. v. Messrs. A. G. Kidston & Co.*, iron and steel merchants, 146 Fenchurch Street, E.C., for £4 11s. 8d., for carriage of three truck loads of nails from Poplar to Ancoats, Manchester. Counsel for the railway company said that the plaintiffs' case was that the defendants asked them for their lowest rate for conveying the nails, and they were told that while the company's risk rate was £22 7s. 3d., the owner's risk rate would be £18 15s. 7d. But the defendants did not sign an owner's risk note. The goods were sent at ordinary rates and now defendants refused to pay the balance. Defendants' counsel said the defendants accepted the plaintiffs' quotation, and it was not their place to sign an owner's risk note. The railway companies were in competition with the steamship companies and quoted accordingly. Then, when the defendants accepted the quotation, the railway company suggested the goods were carried at ordinary rates which were higher than owner's risk rates. The company allowed the defendants a rebate of 1s. 3d. per ton for barging the goods at Poplar. No consignment note was filled up at all. The railway company's counsel pointed out that the railway company could not refuse to carry, and they could not make the traders sign any consignment note unless they wanted to send the goods at owner's risk rates. As that

<sup>1</sup> See the case of *Forder v. G. W. Rly. Co.*, p. 176, in support of this.

was not done the ordinary rates obtained. Defendants' counsel submitted that the railway company were trying to take advantage of the defendants but the company's counsel said there were no after-thoughts about the railway company. Owner's risk rates varied according to insurance. Judge Rentoul, K.C., said he must find for the defendants, with costs, but he would give the plaintiffs leave to appeal, as it was a difficult case. On appeal in December, 1917, the Divisional Court upheld the County Court judge's decision and refused leave to appeal to a higher Court.

### SAY WHO PAYS CARRIAGE.

The last question which a railway company desires the consignor to answer at the time of forwarding a parcel is this : " Who pays carriage ? "

Now, it is not generally known, but it is a fact, nevertheless, that a railway company is not bound to accept a consignment of goods for conveyance if the consignor does not pay the charge for such service at the time of delivering the goods to the carrier. " The carrier is entitled to have his reward paid to him before he takes the package into his custody " (Best, J., in *Batson v. Donovan*, 4 B. & A. 21). The railway companies do not, however, in this matter hold strictly to the letter of the law, and insist on their charges being prepaid ; on the contrary, they make it optional whether the consignor or the consignee shall pay ; all that the companies ask for is a declaration in writing as to who is liable for the amount of their charge, and they look to the party named for payment of their fee.

The answer to the question, " Who pays carriage ? " should, of course, be in strict accordance with the agreement between the buyer and the seller. It is exceedingly objectionable for the consignee to be asked to pay the carriage on the parcel when, according to the terms of purchase, the carriage should have been prepaid. Yet very frequently, owing to an oversight or carelessness on the part of the sender or his agent, a consignment is consigned " to pay " in error, and the customer is offended by being requested to pay the company's charge. In the interests of business, one should be very careful whom one declares to be responsible for a railway company's charge.

A peculiar case, falling under this head, occurred some years ago,

and may with profit be quoted here. It was the case of *Great Western Railway Co. v. Bagge* (15 Q.B.D., 625 ; 54 L.J.Q.B. 599) in which it appeared that the defendant handed the plaintiff company at its Bristol station a boiler trolley to be conveyed to Maidstone. On the consignment note, in the "Who pays carriage?" column, the consignor wrote the word "consignee," and, naturally, the company looked to the consignee for payment of its charges, but he refused to pay on the ground that the consignor had agreed to pay. The company thereupon took action for the recovery of the amounts, and at the trial the defendant admitted that he had agreed with the consignee to pay the railway carriage, but contended that his declaration in the consignment note constituted an agreement on the part of the carriers to collect the carriage from the consignee, and that, therefore, it was he who alone could be sued. But the Court took another view, and held that as he was the contracting party, he—the consignor—was liable. If the sender makes a false statement in the consignment note, well knowing it to be false—as in this case—he cannot expect the law to uphold him. Here the man admitted his deception, notwithstanding which he expected the judgment to be in his favour. But, as the Court observed, a false statement does not bind the company, and if the consignee refuses to pay, then the consignor must, as he is the contracting party.

This decision was confirmed in the case of *Glasgow, Barrhead and Kilmarnock Railway Co. v. Duff* (25 Sh. Cert. Rep. 288) the facts of which, put briefly, are these : A horse was sent from Newark to Barrhead, booked "carriage to pay," and the Barrhead consignee paid the carriage. But the horse did not suit him, and he returned it to the sender, also "carriage to pay," but the Newark man refused to pay the carriage back. The railway company sued the Barrhead man for the return carriage. His defence was that as he had paid the carriage to Barrhead the Newark man should pay the carriage back, but the Court held that a consignor of goods, i.e. the party who makes the contract with the railway company, is the person primarily liable for the freight of the goods, and it gave decree against the Barrhead man for the freight of the horse back to Newark, leaving him to work out any relief he might have against the Newark man.

The North-Eastern Railway Co., on 12th November, 1912, sued

Robert Brown, a Newcastle merchant, for £1 4s., charges incurred in forwarding goods to Hughes, Bolchow & Co., Ltd. The goods were consigned "carriage forward" and the railway company had a rule that goods were not to be delivered until the charges were paid. Hughes, Bolchow & Co., Ltd., had an account with the railway company and were allowed to take delivery, but subsequently a dispute arose between them and the defendant and they refused to pay the carriage. For the defendant it was urged that, as the goods were marked "carriage forward," the company should have collected their charges before delivering the consignment. Judge Greenwell, however, found for the plaintiffs and told the defendant he had a remedy against Hughes, Bolchow & Co.

In the City of London Court on 7th October, 1910, before Mr. Registrar Wilde, Messrs. Pickfords, Ltd., sued Mr. S. B. Gardner for the sum of £1, cartage on a gas engine and fittings from Vauxhall to Barnsbury. After the work was done they applied to the defendant for payment of their charges, but he refused to pay. In giving judgment the Registrar said that Messrs. Pickfords had received instructions from the defendant's representative, and there were no instructions that Messrs. Pickfords were to collect the carriage from the consignee and he must therefore rule that the defendant must pay.

In the same Court on 11th October, 1910, in a similar case (*Gerdes, Hansen & Co. v. Vil Tanges*), the same judge stated that "it was common law as well as common sense that if a person was employed to do a thing it was impliedly agreed that he should be paid by the person giving the order."

### AS TO ROUTEING.

What leads the consignor to order his goods forward by a particular route is the knowledge of the fact that unless they are so conveyed possibly they will not reach their destination in time for the purpose for which they are required. In the case of *Mallett v. Great Eastern Railway Co.* (1899, 1 Q.B.D. 309; 68 L.J.Q.B. 256) for instance, it was shown that the plaintiff handed the defendant company at its Lowestoft station a consignment of fish for conveyance to Jersey, and expressly consigned "*viâ* Weymouth," on the Great Western Railway Co.'s system. Instead of carrying



out these instructions, the Great Eastern Railway Co. by mistake sent the consignment *viâ* Southampton on the London and South Western Railway, which was the longer route. Now the cargo boats from both of these ports—Weymouth and Southampton, that is—were timed to arrive at Jersey at the same hour, but on the day in question bad weather set in and the steamer which had the longer distance to go—the one from Southampton with the fish on board—was seriously delayed in consequence thereof, and as a result the fish did not arrive at its destination in time for the market for which it was intended, and the consignor lost the sale. The sender had anticipated such a contingency and hence it was that he ordered the fish forward *viâ* Weymouth, the shorter route ; and upon his taking action against the company for damages, the Court held that, notwithstanding the fact that the consignment had been consigned at the owner's risk, the company was liable, as it had sent the goods forward by a different route from that agreed upon in the contract.

From the foregoing it must not be assumed that a trader has the right to consign his goods by any route he pleases or to any station that he chooses to name, for in the case of the *Great Western Railway Co. v. Severn and Wye and Severn Bridge Railway Co.* (5 R. & C.C. 191), the Railway Commissioners laid it down quite clearly that : " The natural right of the company which first gets hold of the traffic is to carry it as far as it can on its own line and then, at the point which is most convenient to itself, to hand it over to the company which has to forward it." And this decision seems to cover those cases where a trader desires one railway company to convey a consignment to the railway station of another company in a particular town where the forwarding (or contracting) company also have a goods station. For example, a trader in London may hand a consignment of goods to the London Midland and Scottish Railway for conveyance to Birkenhead, and he may consign the traffic to " Dock Road " station (which is a goods station on the London and North Eastern Co.), but it would seem from the judgment in the last-mentioned case that the London Midland and Scottish would be entitled to refuse to convey the goods to Birkenhead simply to be handed over to another railway company in that town to be dealt with, and might reasonably claim the right to convey the traffic to its own station, i.e.



Egerton Dock Station, in Birkenhead—unless, that is, the consignor is ready and willing to pay an additional charge—over and above the ordinary conveyance rate—for the transference of the parcel from its own station in the destination town to the station of the other company in that place. Several other cases appear to support this view. Thus, in *Johnson v. Midland Railway Co.* (4 *Exch.* 367—6, *Ry. Ca.* 61) it was held that if a company act as carriers they are not bound to carry all kinds of goods from and to every station on the line, but only such goods and to and from such places as they have publicly professed to do and have convenience for that purpose. Again, in *Thomas v. North Staffordshire Railway Co.* (3 *R. & C.T.C.* 1), the defendants delivered minerals at Tunstall Station but refused to deliver there damageable traffic consigned to the applicant, and delivered such traffic at Longport, one mile and a half from Tunstall Station, which was their general goods station for Tunstall. Here the Court held that the applicant was not entitled to have his damageable goods delivered at Tunstall Station; and during the course of the judgment it was said that “as to how far a sender of goods may require delivery at any station he may appoint, or as to how far a company is liable to carry goods of every kind, or for all persons alike, should, we think, be determined in each case, not with reference to what a railway company may choose to do or may ordinarily do, but with reference to what may be within its powers, and at the same time a reasonable requirement.” So far as the present writer can trace, no action has been fought in the Courts to determine a trader’s right to consign traffic in the manner indicated in the London to Birkenhead instance above mentioned, and having regard to the judgments in the cases just quoted, it would appear to be safe to prophesy that even if such an action were brought against any railway company the Court would decide that it was not a “reasonable requirement” on the part of the consignor in requesting the carriers to convey his goods to a certain place to be dealt with there by a second company when they—that is, the forwarding company—could accommodate and deal with the traffic at that place.

But if definite instructions are given by the consignor that a particular parcel is to be forwarded a certain way, and these instructions, after being brought to the notice of the company,

are ignored ; or if the company carries a parcel by an unusual route, an action would lie against it. This is clear from the judgment of Cockburn, C.J., in the case of *Simpson v. London and North-Western Railway Co.* (1 Q.B.D. 274 ; 45 L.J.Q.B. 15, 182) when he said : " Whenever either the object of the sender is specially brought to the notice of the carrier, or circumstances are known to the carrier from which the object ought in reason to be inferred, so that the object may be taken to have been within the contemplation of both parties, damages may be recovered for the natural consequences of the failure of that object."

### RAILWAY COMPANY NOT BOUND TO CONVEY BY SHORTEST ROUTE.

As a general rule, however, apart from any special directions, a railway company is not compelled to convey by the shortest route. In the case of *Hales v. London and North-Western Railway Co.* (32 L.J.Q.B. 292 ; 4 B. & S. 66) Cockburn, C.J., said : " If it were necessary to lay down any rule as to what should be the law in such cases, where no time is mentioned as to the carrying, the obligation of the carrier is to convey within a reasonable period ; but the party who sends is not entitled to call upon the carrier to go out of his ordinary accustomed course, or to have recourse to extraordinary means of dispatch for the conveyance of the goods ; but he is entitled to expect that the carrier will do, not that which is unusual, but that which is within his means and power for the purpose of transmitting the goods." And Blackburn, J. : " I think that the carrier is bound to carry according to the course which he professes ; and as stated in *Johnson v. Midland Railway Co.*, his obligation depends on what his conduct professes. I think he is bound to carry by the route which he holds forth, and which he professes to be his route ; and when he carries goods by that route he is bound to deliver within a reasonable time, having, of course, reference to the route by which he is carrying. I think it is no breach on the part of the carrier if he does not carry by a shorter route, if that shorter route is not the route which he professes to follow. If the customer wishes to go by some other route he should ask ; and then he can choose whether he will send by the carrier, or make a special bargain. But when he sends by the usual route, the carrier must use

reasonable diligence ; and whether he has done so or not is a question of fact for the jury."

### DISPATCH YOUR GOODS EARLY.

In the case of *Garton v. Bristol and Exeter Railway Co.* (28 L. J., C.P. 306) Williams, J., said : " There is no reason why the railway company may not prescribe a certain hour, after which they will not receive goods to go by the next train." Affixed in a prominent position at every railway goods station there is a notice specifying the hour after which goods will not be received for conveyance that day (it is usually 6.30 p.m.), and it would really seem that the average trader has misread the notice to mean that goods shall not be delivered *until* that hour. At any rate, a very large proportion—75 per cent would be a fair estimate—of the goods handed to a railway company for conveyance is taken to the station between the hours of 3.30 and 6.30 p.m., and this operates to the disadvantage of both the trader and the railway company. It obviously follows that if a trader holds his goods back until the very last thing they cannot be handled as carefully as they should be by the railway porters, and there is no doubt that a very large number of the losses and breakages and errors in the calculation of the charges on goods is attributable to this late delivery ; neither the checker nor the invoicing clerk has the time to be careful—that is the secret of the whole thing. And the inference is obvious : *dispatch your goods early*, before mid-day if possible.

Not in any way to detract from what has been just said, but simply to show what is the position of a trader under such special circumstances, the case of *Pickford v. Grand Junction Railway Co.* (12 M. & W. 766) may be quoted here. This case shows that a special agreement to convey goods within a certain time, or by a particular train, may sometimes be inferred from circumstances. The company published and affixed over the door of its goods receiving office a notice that all goods received after 4 p.m. would only be forwarded the next day. A person, who brought goods for carriage after that hour, asked the company's weigher if there was time for the goods to proceed that evening. The weigher said there was. The same person had on previous occasions taken goods of the same kind to the station at even a later hour, and they were

never refused as too late, and had always been forwarded the same evening. And it was held that there was evidence of a special contract with the company to forward the goods on the evening on which they were delivered for carriage.

Of course, a railway company cannot prefer itself in this matter. Thus, in *Palmer v. London, Brighton and South Coast Railway Co.* (1 R. & C.C. 271), the defendant company, with a view to competing with other carriers in the collection and carriage of goods, established receiving offices in various parts of London, from which goods were brought in vans to the railway station. The gates of the station were closed against the vans of the complainant and other carriers at 6.30 p.m., but the company's own vans were admitted at a much later hour, and the goods brought by them were forwarded by the same night's trains. The Commissioners held, that this was giving an undue and unreasonable preference to the company's own traffic, to the prejudice of the complainant, and the rule for an injunction was made absolute, with costs.

#### WHY A RECEIPT SHOULD BE OBTAINED.

It is important that the consignor should obtain a separate receipt from the railway company for each parcel which he forwards, because the first thing a claimant must do when he sues a railway company for, say, goods lost in transit, is to prove that the goods were really handed it for transmission. This is not to suggest that the carriers will purposely deny receiving a parcel if no signature is obtained, but occasionally a consignment gets sent hence unentered, that is, without an invoice or "way-bill," and consequently is lost in transit. In such a case, if the porter to whom the package was handed for forwarding fails to recollect receiving it, the company would have no proof of the correctness of the claim, and therefore refuse to entertain it. It will be seen from this that it is to the sender's interest to secure a signature as advised. Moreover, it has been held by the Courts that mere delivery at a place is not sufficient. Thus, where goods were left at a wharf, piled up among other goods directed to the consignee, but no receipt was given for them, nor any entry respecting them made in the carrier's books, and no person belonging to the wharf was fixed with a privity of their being left there, it was held there was no sufficient delivery. (*Buckman v. Levi*, 3 Camp. 414.)

In this connection the Standard Terms and Conditions of Conveyance, as settled by the Railway Rates Tribunal, provide as follows : " The company shall, if so required, sign a document, prepared by the sender, acknowledging the receipt of the consignment, but no such document shall be evidence of the condition or of the correctness of the declared nature, quantity or weight of the consignment at the time it is received by them."



## CHAPTER IV

### BULKING AND LOADING

BEFORE the increased railway rates were brought into operation the charges on small parcels were big, but now they are much bigger, and hence it becomes more necessary than ever to look into the question of the cost of the conveyance of these consignments, and to consider whether something cannot be done to meet these increased carriage charges.

### THE LAW AS TO SMALL PARCELS.

To begin with, it will be useful to refer to one or two of the early test cases bearing on the subject of small parcels. In *Baxendale v. The South-Western Railway Co.* (35 L. J. Exch. 108), the plaintiffs were common carriers trading under the name of "Pickford & Co.," and they were in the habit of collecting parcels in London and forwarding them to customers in the country. Each parcel was addressed to the person to whom it was ultimately to be delivered, but it was labelled with the name of "Pickford & Co.," and that of the station to which it was to be sent, and all the parcels for the same station were delivered in one consignment, consigned to the plaintiffs at that station. The defendants refused to charge the plaintiffs for the carriage of their parcels at a tonnage rate upon the gross weight, and charged for each parcel separately according to its individual weight. The Court held that the railway company by their action created an inequality and gave judgment against them.

The case of *Great Western Railway Co. v. Sutton & Co.* (38 L. J., Exch. 177 H. of L. ; L.R. 4 H.L. 226) is also instructive in this connection. Here the plaintiff, a carrier, was in the habit of collecting small parcels and sending them together in large packages by the defendants' railway. The defendants charged different rates of carriage for different classes of goods, the highest charges being for "packed" parcels. A declaration was required from the plaintiff as to the description of his parcels. He declared them as "packed" parcels, and was charged and paid accordingly. Finding, however, that other firms sent packed parcels, from whom

no declaration was required and who were charged for them at a less rate, he sued the company to recover the alleged excess as for money had and received. At the trial he gave evidence that the practice of the other firms in sending "packed parcels" was notorious. The House of Lords, affirming the judgment of the Exchequer Chamber, held that the evidence produced was admissible, and was sufficient to show that the defendants knew of the practice of other firms to pack their parcels, and that with such knowledge they had improperly charged the plaintiff with a higher rate of charge, and had thus infringed the equality clause, and that the plaintiff was entitled to recover the amount so charged in excess as for money had and received.

Then in *Crouch v. London and North-Western Railway Co.* (7 Ry. Ca. 717), the defendants advertised themselves to carry parcels, etc., from London to Glasgow (though their own line ended at Preston), and habitually received, booked and carried parcels of all descriptions from London to Glasgow (receiving pre-payment for the whole distance), having made arrangements with other companies, by which the defendants' vans, being locked in London, were carried through from Preston to Glasgow, under the management and by the locomotive power of the other companies. The defendants had issued written orders to their servants, that "packed" parcels should be invoiced to termini of the defendants' line only. The plaintiff had received notice of this order, but it had never been enforced against anyone but the plaintiff, and the defendants had knowingly carried packed parcels from London to Glasgow since the order was issued; but they refused to carry a packed parcel for the plaintiff further than Preston. Here it was held, first, that by the 8 and 9 Vict., C. 20, Sections 86, 87 and 89, the defendants were in the position of common carriers, and that having held themselves out, and acted as common carriers from London to Glasgow, they were bound by the common law to receive and carry all goods tendered to them to be carried from London to Glasgow, although the latter place was out of England. Secondly, that being common carriers, and having carried packed parcels for some persons, they were bound to carry them for all.

Read in conjunction one with the other these three cases make the position quite clear and establish the fact that small or "mixed" parcels must be carried for any and everyone.

## THE PRACTICAL SIDE OF THE QUESTION.

So much for law; now as to practice. Regulations 2 and 3 of the revised General Railway Classification provide respectively as follows—

### 2. CONSIGNMENTS.

- (a) Each consignment is charged separately.
- (b) If goods are collected by the Company or its agents from two or more places, each lot separately collected is charged as a separate consignment over the railway.
- (c) Separate lots of traffic in the same class, chargeable at the same rate, from one Sender for different Consignees at one station, will be charged over the railway as one consignment, provided that—
  - (i) They are consigned to be charged together.
  - (ii) The whole of the lots are handed to the Company at one time.
  - (iii) The charges are paid by the Sender, or by special arrangement with the Companies by one Consignee.

When traffic from one Sender for one Station is handed to or collected by the Railway Company at different times of the day, each lot must be accompanied by a separate Consignment Note and will be charged separately, except as provided for in the following paragraph.

When it is not possible for want of room on the road vehicle to cart a consignment at one time, a Consignment Note for the whole of the traffic must be tendered with the first lot. In such cases the total quantity shown on the Consignment Note and tendered to the Railway Company on one day will be charged as one consignment.

When a consignment upon which charges are paid by one trader is split into different portions at destination, a charge of 1d. per portion will be made for the service.

When goods charged as one consignment over the railway (charges being paid by one Trader) involve separate deliveries in portions not exceeding 3 cwts., the following charges are made in addition to the tonnage cartage charges—

Traffic	}	In London—
charged at		3d per cwt. minimum 4d. each separate cartage.
rates including		At stations other than London—
cartage.		2d. per cwt. minimum 3d. each separate cartage.

*NOTE.—Goods delivered outside the prescribed boundaries are subject to extra cartage charges in addition to the above.*

The foregoing charges are additional to the charge of 1d. per portion mentioned above.

### 3. SMALL CONSIGNMENTS.

(a) A consignment not exceeding 3 cwts. is chargeable as a small parcel, with a minimum charge as for 28 lbs.

Where a minimum charge is applicable, this is made if in excess of the charge at the Small Parcels Scale.

(b) The charge for a consignment exceeding 3 cwts. is not to be less than the charge for 3 cwts.

Now we will assume for the purpose of illustration—and to see what the application of this rule really means in practice—that Messrs. Manufacturers, Ltd., have three small consignments, each weighing 56 lbs., to send to “A” and “B” respectively in “X” and that the tonnage rate applicable to this particular class of goods is 20s., C. and D. If the packages are consigned separately the charge on each of them, at the “Smalls” scale, will be 1s. 1d., or 3s. 3d. the three; but if they are consigned together as one lot and “split” deliveries paid in accordance with the above-mentioned rule a small saving can be made, as then the charges will work out as follows—

1 cwt. 2 qrs. 0 lbs. @ 20s. at the “Smalls” scale .	=	s. d.
3 “Split” deliveries @ 3d. each . . . . .	=	2 1
3 Splits . . . . .	=	9
		<u>3</u>
		<u>3 1</u>

showing a difference to the good of 2d.

Here are some calculations which show that even if the weights vary a saving can—in some instances—be effected if three small lots are “bulked”—

<i>As separate lots—</i>						
	<i>cwts.</i>	<i>qrs.</i>	<i>lbs.</i>			<i>s. d.</i>
A 1 Case,	2	0	@	20s. (at the “Smalls” scale)	=	1 1
B 1 “	1	1	@	20s. “	=	1 10
C 1 “	1	0	@	20s. “	=	1 7
<u>3</u>	<u>2</u>	<u>3</u>	<u>0</u>			<u>4 6</u>

<i>As a “bulked” consignment—</i>						
	<i>cwts.</i>	<i>qrs.</i>	<i>lbs.</i>			<i>s. d.</i>
3 Cases, 2	3	0	@	20s. (at the “Smalls” scale)	=	3 4
3 “Split” deliveries @ 3d. each . . . . .					=	9
3 Splits . . . . .					=	3
						<u>4 4</u>

This also shows a gain of 2d. But the more small lots there are the greater—in most instances—is the reduction in the carriage charges when they are forwarded as one lot. Thus, suppose there are three lots of 1 cwt. each for different consignees—

<i>As separate lots—</i>						
	<i>cwts.</i>	<i>qrs.</i>	<i>lbs.</i>			<i>s. d.</i>
A 1 Case, 1	0	0	@	30s. (at the “Smalls” scale)	=	2 2
B 1 “	1	0	@	30s. “	=	2 2
C 1 “	1	0	@	30s. “	=	2 2
<u>3</u>	<u>3</u>	<u>0</u>	<u>0</u>			<u>6 6</u>

<i>Bulked—</i>					<i>s.</i>	<i>d.</i>
<i>cwts. qrs. lbs.</i>						
3 Cases,	3	0	0 @ 30s. (at the "Smalls" scale)	=	5	2
3 "Split" deliveries @ 3d. each				=		9
3 Splits				=		3
					<u>6</u>	<u>2</u>

Here the saving effected by "bulking" is 4d.

And suppose the weights of the three cases vary, here is the result—

<i>As separate lots—</i>					<i>s.</i>	<i>d.</i>
<i>cwts. qrs. lbs.</i>						
A 1 Case,	1	0	@ 30s. (at the "Smalls" scale)	=	1	1
B 1 "	1	1	@ 30s. " "	=	2	7
C 1 "	1	2	@ 30s. " "	=	2	11
3	3	0	0		<u>6</u>	<u>7</u>

<i>Bulked—</i>					<i>s.</i>	<i>d.</i>
<i>cwts. qrs. lbs.</i>						
3 Cases, 3	0	0	@ 30s. (at the "Smalls" scale)	=	5	2
3 "Split" deliveries @ 3d. each				=		9
3 Splits				=		3
					<u>6</u>	<u>2</u>

A profit of 5d.

Now take a five case lot and see the result—

<i>As separate lots—</i>					<i>s.</i>	<i>d.</i>
<i>cwts. qrs. lbs.</i>						
A 1 Case, 1	0	0	@ 50s. (at the "Smalls" scale)	=	3	3
B 1 "	1	0	@ 50s. " "	=	3	3
C 1 "	1	0	@ 50s. " "	=	3	3
D 1 "	1	0	@ 50s. " "	=	3	3
E 1 "	1	0	@ 50s. " "	=	3	3
5	5	0	0		<u>16</u>	<u>3</u>

<i>As a bulked consignment—</i>					<i>s.</i>	<i>d.</i>
<i>cwts. qrs. lbs.</i>						
5 Cases, 5	0	0	@ 50s. the revised "tonnage rate"	=	12	6
5 "Split" deliveries @ 3d. each				=	1	3
5 Splits				=		5
					<u>14</u>	<u>2</u>

## HOW TO BULK SMALL PARCELS WITH BIG ONES.

Regulation No. 4 of the revised General Railway Classification makes it possible for this bulking to be applied in another way—



in the consigning of small parcels with big ones. This is how the rule named reads—

#### 4: MIXED CONSIGNMENTS.

(a) The rate recorded for a minimum weight exceeding 3 cwts. will be charged on the goods to which it is applicable forming part of a mixed consignment even though such goods alone are not of that weight, provided that (1) the weight of the whole consignment equals or exceeds the highest minimum weight attached to any of the rates charged, and (2) the whole of the charges are paid by one Trader.

Where applicable the additional charge per parcel authorized for small parcels will be payable in respect of each description of goods included in a mixed consignment as if such goods formed a separate parcel, but two or more descriptions of goods may be combined and the aggregate weight charged at the highest rate applicable for that weight of any of the goods included, or if all of the goods combined are chargeable at one rate, then as if they were all of the same description.

#### EXAMPLE

TRAFFIC	WEIGHT	RATE APPLICABLE	CHARGES ARE MADE ON
	T. c. q.		
Soap . . . . .	1 - -	Class 11 (min. 2 tons)	Actual weight at tonnage rate
Sugar . . . . .	11 -	Class 11 (min. 2 tons)	Actual weight at tonnage rate
Paper . . . . .	2 -	Class 11 (min. 2 tons)	Actual weight at tonnage rate
Confectionery . . . . .	3 -	Class 15. . . .	Smalls scale, or, if cheaper, two or more descriptions may be combined and charged at the highest rate applicable to any of the portions so combined
Essences and Extracts for human food . . . . .	2 -	Class 20. . . .	
Hardware, i.e. Metalware . . . . .	2 -	Class 18. . . .	
	2 - -		

(b) Articles in different classes of the classification, not packed together but forming one consignment, are charged separately, unless it is cheaper to charge them together at the highest rate applicable to any of the articles.

(c) A package containing merchandise in different classes of the classification is charged at the rate applicable to the highest of such classes.

(d) In the case of mixed consignments of Inflammable Liquids in Classes A and B of the Classification of Dangerous Goods sent in one wagon from the same Sender to the same Consignee, when the weight of the Class A liquid is less than the minimum weight specified for it, the actual weight of each class is charged for, but the total charge for the whole consignment will not be less than the minimum charge applicable to the liquid in Class A.

One or two specific examples will make the meaning of this quite clear. Suppose, for instance, that between stations A and B the ordinary Class 17 rate, the rate applicable to "Printed matter—not bound," is 30s. per ton, and that there is a special rate in operation between these points for the same class of goods of 23s. per ton for 2-ton lots; also that the Class 18 rate—i.e. the rate

chargeable on "Books"—is 40s. per ton; and that Messrs. Printer & Co. have a consignment of printed matter weighing 35 cwts., as well as a consignment of books weighing 5 cwts. to forward from A to B. If the two lots are consigned separately the railway company will charge carriage as follows—

	tons cwts. qrs. lbs.					£ s. d.		
Printed matter =	1	15	0	0 @ 30s.	(the ordinary Class 17 rate)	=	2	12 6
Books . =		5	0	0 @ 40s.	(the ordinary Class 18 rate)	=		10 -
	<u>2 0 0 0</u>						<u>£3 2 6</u>	

But if they are consigned together—in the manner to be described a little later on—they will be charged for in this way—

	tons cwts. qrs. lbs.					£ s. d.		
Printed matter =	1	15	0	0 @ 23s.	(the special 2-ton rate)	=	2	- 3
Books . =		5	0	0 @ 40s.	(the ordinary Class 18 rate)	=		10 -
	<u>2 0 0 0</u>						<u>£2 10 3</u>	

And—as one can see at a glance—by so consigning their goods Messrs. Printer & Co. will save the sum of 12s. 3d.

The accompanying statement of various consignments in different classes of the classification, worked out at rates actually in operation between the stations named, gives further examples of what can be done in this direction.

## HOW TO SECURE THE APPLICATION OF THE LOWER RATES.

Now the best way to secure that the lowest rates are applied to the several different consignments is either to consign them all on the one consignment note and to endorse the document thus: "To be charged together as one lot," or—if separate consignment notes must be used to meet some special requirement of the consignor's business—to endorse each consignment note in this manner: "To be charged together with other goods forwarded to-day." Those who do a big business with the railway companies will find it to their advantage to have rubber stamps made, bearing these instructions, for impressing on their forwarding notes when occasion demands.

One could go on filling page after page of this book with examples of how economies can be effected by bulking goods intended to be forwarded from one place to another by railway, but the foregoing must suffice. What it really amounts to is this: there are certain rules and regulations governing the consignment of goods by railway, and some of these rules make it possible for two or more

STATEMENT SHOWING EFFECT OF "BULKING" GOODS FOR CONVEYANCE CHARGES PURPOSES.

To or from London and	Goods.	Weight.	IF CONSIGNED AS SEPARATE CONSIGNMENTS.				IF BULKED.				Total Charges.	Saving effected by Bulking.
			Rate appli- cable	Separate Carriage Charge.	Total Charge.	Rate appli- cable.	Conditions attaching to Rate.	Carriage Charges.				
		<i>tons cwt. qrs. lbs.</i>	<i>£ s. d.</i>	<i>£ s. d.</i>	<i>£ s. d.</i>	<i>£ s. d.</i>		<i>£ s. d.</i>	<i>£ s. d.</i>	<i>£ s. d.</i>		
Ashford (Kent)	Flaked maize	1 0 0 0	1 9	1 9	3 15 9	14 1	A special 2-ton rate.	14 1	2 17 -	18 9		
	Grain	2 0 0 0	11 -	1 2 -		8 7	" 6-ton "	17 2				
	Oil Cake	3 0 0 0	11 -	1 13 -		8 7	" 6-ton "	1 5 9				
		8 0 0 0										
Bradford	Printed matter	10 0 0 0	2 16 -	1 8 -	5 - 2	2 11 10	" 1-ton "	1 5 11	4 10 7	9 7		
	Paper	1 7 0 0	2 6 3	3 2 6		2 - 9	" 2-ton "	2 15 -				
	Stationery	3 0 0 0	2 18 9	9 8		2 18 9	" Any Qty.	9 8				
		2 0 0 0										
Bristol.	Cocoa (raw)	2 0 0 0	1 13 10	3 7 8	8 13 4	1 8 3	" 5-ton "	2 16 6	7 18 -	15 4		
	" (Mfd)	1 0 0 0	1 18 -	1 18 -		1 13 10	" 2-ton "	1 13 10				
	" Bean husks	2 0 0 0	1 13 10	3 7 8		1 13 10	" 2-ton "	3 7 8				
		5 0 0 0										
Bristol.	Butter	1 0 0 0	1 19 4	1 19 4	21 10 10	1 9 7	" 10-ton "	1 9 7	16 12 0	4 18 10		
	Cheese	3 0 0 0	1 19 4	5 18 -		1 9 7	" 10-ton "	4 8 9				
	Tea	1 0 0 0	2 16 -	2 16 -		2 2 1	" 3-ton "	2 2 1				
	Eggs	3 0 0 0	2 11 10	7 15 6		2 2 1	" 5-ton "	6 6 3				
Brighton	Sugar	2 0 0 0	1 11 -	3 2 -	14 11	1 2 8	" 10-ton "	2 5 4	14 11	15 4		
		10 0 0 0										
	Currants	2 0 0 0	1 2 3	2 11								
	Dates	2 0 0 0	1 2 3	2 11								
Derby.	Lard	2 0 0 0	1 2 3	3 1	1 9 10				3 10 2	10		
	Peel	2 0 0 0	1 3 9	3 1								
	Preserves	2 0 0 0	1 4 5	3 1								
	Tapioca	2 0 0 0	1 3 9	3 1								
	Sultanas	2 0 0 0	1 2 3	2 11	2 6 3	2 6 3	" Any Qty.	11 7	14 11	15 4		
	Figs	2 0 0 0	1 2 3	2 11		1 5 5	" 2-ton rate	1 5 5				
	Raisins	2 0 0 0	1 2 3	2 11		2 4 3	" Any Qty.	1 13 2				
	Semolina	2 0 0 0	1 4 5	3 1								
		1 0 0 0			4 - 2				3 10 2	10		
	Indiarubber waste.	5 0 0 0	2 6 3	11 7								
	Paper materials	1 0 0 0	1 15 5	1 15 5								
	Scrap brass	15 0 0 0	2 4 3	1 13 2								

parcels to be charged together so that low rates can be applied to them. One cannot lay down any hard and fast rule and say "Do this!" or "Do that!" and thus ensure that your goods are always charged at the lowest rates; all that one can do is to draw attention to certain facts and leave it to the reader to act upon the information if and when it is to his interests—when it pays him—to do so.

### SOME TEST CASES IN RELATION TO EXTRAORDINARY TRAFFIC.

In the case of *London and North-Western Railway v. Johnson* (*Railway News*, 7th March, 1914), which came before the Newcastle County Court in February, 1914, the railway company sued for £1 15s. 4d., balance of charges for the carriage of an anvil block weighing 13 tons 5 cwt., from St. Helens to Newcastle. According to the rate book, so it was said, the full charge per ton was 18s. 4d., and the owner's risk rate was 13s. 4d. per ton, and in this case the rate of 13s. 4d., plus one-fifth, was charged. The defendant objected to the additional charge, contending that as an asterisk was not shown against the entry for "anvil blocks" in the railway companies' general classification of goods, indicating that these articles were subject to special arrangement when of exceptional weight, etc., as in the case of the entry for anvils, the correct rate was the Class C without any addition. He also contended that an anvil block of this weight was not "unusual" and he had not previously been charged any addition to the rate, but did not produce evidence to support this statement.

The solicitor for the company showed that under Section 4 of the Act of 1891, quoted above, the company had the right to charge a reasonable extra sum for articles of "unusual" length, bulk, or weight. The "unusual," he said, did not apply to "unusual" in the trade, but to "unusual" on the railway. For instance, a 60 ft. ladder or a 100-ton gun was "usual" in the trade, but not on the railway. No case exactly the same as this had ever been before the Courts, but the question of a reasonable charge had been before the House of Lords in a case of the *Midland Railway Co. v. Myers, Rose & Co.* (*L.T.* 159—411), and it was then held that "reasonable" had to be interpreted by an ordinary tribunal when there was a dispute. His client's charge, he

contended, was reasonable, because all the railways, ever since 1867 had made a basis rate of charges. Up to 10 tons was regarded as "usual"; above that, 10 to 15 tons was charged one-fifth more, and 15 to 20 tons one-third more, and so on. These rates had never been previously disputed. To show that the anvil block of over 13 tons was not usual railway traffic, the company's solicitor said a record was kept on the North-Eastern Railway in January last, and 135 articles were found to be carried of over 10 tons, their average weight being 18 tons, this meaning that out of every 10,000 tons of ordinary merchandise carried 16 tons came into this class. In this case a 40-ton trolley had to be used, as an ordinary wagon could not get into the works, and the anvil block had to be carried all the way to Newcastle on it by the slowest class of goods train. In addition to the extra cost of building such a wagon, its journey took much longer, fourteen days on the average, compared with the five days of the ordinary wagon, and as a matter of fact the cost of using it was just about double that of using an ordinary wagon.

His Honour gave judgment for the plaintiffs and refused leave to appeal. He held that the weight at which additional charges were made by the railway companies was a reasonable one, and he further held that the reasonableness of the amount of such charges had been amply proved.

Another case of a similar kind—though one in which a railway company was only indirectly concerned—was *London Welsh S.S. Co. v. Slingsby*, tried in the City of London Court in November, 1915. Here the plaintiffs sought to recover the sum of £1 10s. 1d., balance of freight due for the carriage of extension ladders. The defence was that the plaintiffs had from time to time delivered similar goods for the defendant, only charging freight for the actual weight of them, and therefore in the absence of any agreement were not entitled to charge a minimum rate for one ton of £1 10s. for the goods delivered, the weight of which was only 2 cwt. 16 lbs. Plaintiffs' counsel said that they carried the goods from London to Ferndale, Glamorganshire, for the defendant. No freight was charged at all. Plaintiffs carried the goods from London to Cardiff by water and then transferred them by rail, where they were taken to Ferndale. The railway company would have charged 77s. 8d. if the goods had gone by rail all the way. The rate from Cardiff to



Ferndale, Glamorganshire, was 10s. 6d., and plaintiffs had had to pay that. They also paid the cost of collection in London by cart, the wharfage charges at their wharf, and the cost of transit by steamer as well as the railway charges. They always charged a minimum rate for ladders of one ton. No quotation was asked for when the goods were handed over to them, and they were carried under their usual terms. There was no record of defendant having paid the charges, as the carriage had been forward in other transactions. Defendant's solicitor said they were contesting the case on principle. It was a test case, and one of importance. They were constantly sending ladders to Wales, and for the plaintiffs to charge for goods weighing 2 cwts. 16 lbs. as if they were one ton was ridiculous, no matter what their size or weight. Defendant said that the ladders in question came to London from Bradford for 5s., having come round by rail, taking three weeks. Plaintiffs should have charged for the ladders by weight (and then their charge would have been 4s. instead of 30s.) instead of a minimum rate. Judgment, however, was given for the plaintiffs.

### THE WAGON SUPPLY PROBLEM.

Now there is a curious feature of this matter to which it will be profitable to refer at some length, we mean the obligation—or otherwise, for there would appear to be some doubt in this matter—on the railways to provide, on application, suitable vehicles for the carriage of any traffics.

In the famous test case of *Spillers & Bakers v. Great Western Railway Co.* (*R. & C.T.C.* Vol. XIV—52), the applicants, who were flour millers carrying on business at Cardiff, dispatched daily over the Great Western Railway Co.'s system some sixty wagons containing flour, grain and other similar merchandise, all of which was included in Class C of the general railway classification. Owing to an alleged difficulty in obtaining from the railway company sufficient suitable covered wagons, the applicants in 1905 had 300 covered wagons built for them which had since been running over the lines of the railway company, carrying the applicants' merchandise. The railway company, who alleged that they were willing and able to provide suitable wagons for the applicants' traffic, charged their ordinary published rates for the conveyance of such merchandise, which rates included the provision of wagons.

The applicants claimed that they were entitled to a reduction off the railway company's authorized rates for conveyance in accordance with Section 2 (b) of the schedule to the railway company's Rates and Charges Order Confirmation Act, 1891, on the ground that the railway company did not provide wagons for their traffic. The railway company by their answer and by a cross-application claimed that they were not bound to convey the applicants' merchandise in wagons provided by the applicants, whereupon the applicants claimed that the right of having their traffic conveyed in their own wagons was a "reasonable facility" to which they were entitled.

Here the Railway Commissioners held (a) that the Toll Sections of the Railway Clauses Consolidation Act, 1845, gave a right of passage only over railways as highways, and *were in practice unworkable*, inasmuch as there was no duty imposed upon a railway company to work signals and points and afford station accommodation to the trains of private owners; (b) that the railway company's Rates and Charges Order Confirmation Act, 1891, was not confined to providing for the charges to be made in cases where the company was bound to carry or to afford particular accommodation, but was framed to provide for accommodation and services of every sort, whether voluntary or obligatory, within the scope of the company's undertaking, and that therefore those sections of the schedule to the Act dealing with the trucks of private owners did not import any general statutory right to have goods conveyed by a railway company in a trader's own truck; (c) that the words "Where the company do not provide trucks," in Section 2 (b) of the Schedule to the Rates and Charges Act, 1891, do not apply where the railway company is ready and willing to provide trucks, but the trader prefers to use his own; (d) that—taking into consideration the consequent (1) increased haulage of empties; (2) necessity for larger sidings and goods yards; (3) greater time occupied in shunting; (4) loss of economy in working, which depends on trucks being fully loaded; and also that the railway company had  $4\frac{1}{2}$  millions of pounds invested in trucks, and that a large increase of private traders' trucks would increase the cost of conveyance to all other persons—it was not a "reasonable facility" under Section 2 of the Railway and Canal Traffic Act, 1854, that a trader should be entitled to have ordinary commodities

carried in his own trucks, where trucks are "provided" by the railway company.

Whilst the Court of Appeal, to whom the case was subsequently referred for the settlement of a certain point, held (affirming the decision of the Railway Commissioners), that the Railway Clauses Consolidation Act, 1845, *does not impose any obligation upon a railway company to convey traders' merchandise in their own trucks*; and that, although under the Railway and Canal Traffic Act, 1854, the railway company must afford facilities for conveying a truck as a separate article on payment of a reasonable rate, *a trader is not entitled as of right to have his own loaded truck forwarded as a means of forwarding the goods therein contained* upon payment of tolls based upon the rates applicable to such goods either with or without abatement; and that the railway company's Rates and Charges Order Confirmation Act, 1891, while exempting the railway company from providing wagons for mineral traffic and making provision for such circumstances, does not import a positive obligation as to all traffic other than mineral traffic.

Now consider the case of the *North-Eastern Railway Co. v. Bannister & Co.* (*Railway News*, 3rd July, 1915), where the railway company brought an action to enforce a claim for the carriage of hay. The hay in question was machine pressed, and by the schedule to the Act of 1891 such hay went at a rate of 40 cwts. to the wagon. The company, however, agreed to take such hay at  $2\frac{1}{2}$  tons per wagon at a certain rate, and there was no dispute that it was the terms of the special rate that constituted the contract under which the particular hay was carried. The plaintiff's contention was that the contract meant what it said, and if machine-pressed hay was consigned in a wagon that held less than  $2\frac{1}{2}$  tons, it must be paid for at the rate in question, as  $2\frac{1}{2}$  tons, that was to say, the full load for machine pressed hay. The schedule rate was two tons to the truck, and the company's contention was that if the special rate of  $2\frac{1}{2}$  tons per truck was taken advantage of *the consignee must pay at that rate whether the truck held  $2\frac{1}{2}$  tons or not*. The defendants' contention was that if the rate charged was for  $2\frac{1}{2}$  tons per truck the truck should be capable of holding  $2\frac{1}{2}$  tons.

The County Court Judge agreed with the defendants, but against this decision the railway appealed and in the Appeal Court counsel for the railway company submitted that the defendants were

seeking to get the benefit of the special rate and at the same time throw upon the company all the obligations imposed by the schedule to the Act. The defendants, he argued, if they complained of the size of the company's wagons *could have used their own*. He further contended that the defendants were trying to get it both ways ; they claimed to pay for the quantity carried if it was less than  $2\frac{1}{2}$  tons, but only for  $2\frac{1}{2}$  tons if the truck held more. It was an attempt to get the Court to compel the railway company to supply trucks of a particular dimension, which the Railway and Canal Commission alone could do. If the defendants had any grievance at all *their remedy was to supply their own trucks* or go to the Railway and Canal Commission to compel the company to provide reasonable facilities.

Lord Justice Swinfen Eady asked whether the decision of the Court below was that the railway company, having offered to carry this hay at a special rate, they were bound to provide such trucks as would enable that offer to be taken advantage of. Counsel said he thought that was so.

Lord Justice Bankes : " Do you say that all machine-pressed hay came within the minimum load in the schedule ? If a man sends one cwt., do you claim the right to charge him for the carriage of  $2\frac{1}{2}$  tons ? "

Counsel said yes. Carriage of these things did not pay except on the principle of a minimum charge. The Act said that with the exception of hydraulic-pressed, which might be consigned in small parcels, the railway company was not bound to carry hay except in minimum quantities of 30 cwt.

In giving judgment, Lord Justice Swinfen Eady said that there was no obligation on the railway company to supply trucks, and in his opinion the true meaning of the company's offer was not that they were under any obligation to supply trucks to enable the trader to take advantage of it, but that where he was able to take advantage of it they would give him facilities for doing so. The offer did not carry with it any obligation to send the goods in suitable trucks.

The quantities mentioned were to show that whatever the quantity consigned was, the railway company were entitled to charge for a minimum quantity. There was no contract by the railway company to carry these goods at a  $2\frac{1}{2}$  ton rate, and therefore no obligation upon them to furnish wagons of that capacity.



## **SPECIAL TRUCKS SHOULD BE ORDERED IN ADVANCE.**

Whenever a separate or special truck is required for a particular consignment or for a particular purpose, it should be ordered from the local goods agent well in advance, not less than forty-eight hours before it is wanted for use, and the purpose for which it is required should be stated. If due notice is given, the goods agent is enabled to wire to the nearest big centre, where special vehicles are generally kept in readiness, and thus ensure the receipt by him of the particular truck desired.

Railway companies used not formerly to insist on forwarding instructions being handed to them together with the goods, but now—quite rightly it may be interposed—they require to know almost at once for whom the goods are intended. Here are the particulars of one interesting case where the point cropped up.

Messrs. John Bradbury & Co., Hay and Straw Dealers, Peterboro', sued the Great Northern and Great Eastern Joint Railway Co. in the Sleaford County Court on 1st June, 1912, for 5s., damages sustained through its action in refusing to accept goods for them at Scopwick Station.

Mr. John Bradbury, in giving evidence, said he was the senior member of the plaintiffs' firm. For some ten years they had had a ledger account with the Great Northern and Great Eastern Co. That meant they did not pay down on the nail, but had a running account. During the year 1911 they paid a considerable sum to defendants for goods consigned over their system. Up to Feb., 1912, they had a signed agreement with the defendants, by which they agreed to send forwarding instructions within 48 hours or pay the demurrage. All their goods, however, had been cleared within the 48 hours. They wrote to Mr. Marshall, the Great Northern Railway representative at Peterboro', asking him to cancel this agreement, but he replied that the company would not agree, and this test was the outcome of the correspondence. In Feb. witness bought some seeds of a Mr. Bembridge, at Timberland, and gave him certain instructions with regard to consignment. He had previously written to Mr. Moore, the Great Northern Railway District Manager, Boston, who replied that the company could only accept hay and straw providing that definite forwarding orders had been handed in prior to or with the goods.

The Judge: "The company evidently insisted upon a definite



forwarding order. That means the company was to be informed exactly where the goods were to go to at the time ? ”

Counsel for the plaintiffs : “ Yes, your Honour.”

The Judge : “ Before this time you had sent goods and later on the company was advised where to send them ? ”

Counsel for the plaintiff : “ That is so.”

Another witness deposed that he remembered taking the seeds to Scopwick Station on 24th Feb. He saw the station-master, who said there was no order and he would not accept them.

Counsel for the railway company explained that the practice which had obtained in the past of sending hay and straw to be stored at stations until it was required had proved very convenient for the traders, but very inconvenient for the companies. They had no places in which to store the hay and straw, which were very dangerous goods to keep about and easily damaged. It had the effect of keeping trucks idle and blocking up stations, so the companies gave strict notice that they would not accept any of this traffic, unless the trader either gave a forwarding order or signed a printed agreement to pay demurrage at the rate of 3s. per day unless the goods were removed within 48 hours. His contention was that it was the duty of a railway company as a common carrier to receive traffic when ready to set out on a journey. That journey could not be known unless a person said where he wanted the goods to go to. The judgment in the case of *Lane v. Cotton* (12 Mod. R. 473) was : “ That a common carrier may refuse to admit goods before he is ready to take his journey.” A trader could not call upon a railway company to take goods into a warehouse, but its profession was to carry goods when told where to take them. According to Section 98 of the Railway Clauses Consolidation Act, every person when handing in traffic must state to the company the destination of the goods, or it was entitled to refuse to accept the goods.

For the plaintiffs it was urged that it was not reasonable in the interest of the public for the company to refuse to convey these seeds, seeing that in their letter to Mr. Moore, Boston, they promised to hand in a forwarding order within 48 hours or pay any reasonable charges. It was further urged that as common carriers the company ought to have accepted these goods, and having refused them the plaintiffs were entitled to the small damages they claimed.

The Judge remarked that whether Section 98 applied or not, and he believed it did apply, he had no hesitation in finding for the defendants on the broad lines of common law. Railway companies being common carriers were bound to take all goods tendered to them to be conveyed which were within their profession unless they were goods which caused danger. In this case defendants were not necessarily warehousemen. It would be impossible for the company to carry on its business if it were bound to receive all goods brought to it, and store them possibly for an indefinite period. It was not within the scope of the company's business, as it must know where it was to carry the goods. That had been so from the beginning of carrying.—Verdict for the defendants with costs.

### **RAILWAY COMPANY'S LIABILITY FOR NON-PROVISION OF TRUCKS.**

On the other hand, if a railway company fails to provide trucks when ordered an action would lie against it. Thus, in *Irvine v. Midland Great Western of Ireland Railway Company* (6 L.R. Ir. 55) it was shown that the defendant company contracted with the plaintiff, to provide, within a reasonable time, a particular description of large wagons, at a specified rate of freight per wagon, for the carriage of a quantity of hay from a station on its line to G., a town about twenty-five miles distant, where the hay was intended for sale. Five tons of hay were delivered to the railway company, but carried by it in smaller wagons, for which it charged and was paid the same rate per wagon, thus increasing the cost of carriage per ton. The company not having provided wagons for the description agreed for, the plaintiff did not deliver to it for conveyance the rest of the hay, which he kept for some time, and, after notice to the company, sold and disposed of under cost. Here it was held that if the hay had been delivered to the railway company for conveyance, or had been otherwise conveyed in a reasonable manner to its destination, the proper measure of damages would have been the extra cost of conveyance, and that the only damages which the plaintiff could recover was the extra cost of conveyance, in respect of the five tons actually delivered and conveyed, arising from the freight being calculated upon a wagon of less carrying power. In *Hobbs v. London and South*

*Western Railway Co.* (L.R. 10 ; Q.B. 120) Blackburn, J., said : " Where there is a contract to supply a thing which is not supplied, the damages are the difference between that which ought to have been supplied and that which you have to pay for, if it be equally good ; or if the thing is not obtainable, the damages would be the difference between the thing which you ought to have had, and the best substitute you can get upon the occasion for the purpose."

In another case, *Walker v. Midland Great Western of Ireland Railway Co.* (4 L.R. Ir. 376), the defendant railway company having failed to provide horse-boxes, pursuant to contract, for the conveyance of horses for sale by auction in Dublin on the day but one following, the owner was compelled to send them by road, a distance of twenty-four miles, in order that they might arrive in due time for the sale and for previous inspection by purchasers. The horses, which were valuable hunters, were in soft condition at the time. They were deteriorated in appearance by the fatigue of the road journey ; one of them was lamed ; and such as were sold realized prices below what would have been otherwise obtained, the others being left on the owner's hands. It appeared that if they had been in hard fed condition they would have borne the journey without injury. The company's station-master was, at the time of the contract, aware of the intended sale, and of the day on which it was to take place. It was held, that the company was not liable in damages for all loss which the owner sustained in consequence of the injuries occasioned to the horses by the road journey, but that the measure of damages was the deterioration which the horses, if in ordinary condition and fit to make the journey, would have suffered thereby, and the time and labour expended on the road.

#### MINIMUM TRUCK LOADS : WHAT ARE.

By Rule 18, Fifth Schedule, of the Railways Act, 1921, it is provided that : " For any quantity of merchandise less than a truck load which the company either receive or deliver in one truck, on, or at a siding not belonging to the company, or which, from the circumstances in which the merchandise is tendered, or the nature of the merchandise, the company is obliged or required to carry in one truck, the company may charge as for a reasonable minimum load, having regard to the nature of the merchandise."

In the revised railway classification these "minimum loads" are given as follows—

Classes	1 to 6	.	.	.	.	6 tons
„	7 to 9	.	.	.	.	4 tons
„	10 to 11	.	.	.	.	2 tons
„	12 to 21	.	.	.	.	1 ton

In such cases carriage must be prepaid, or payment guaranteed by senders.

NOTE. The "Standard Terms and Conditions of Carriage of Merchandise by Merchandise Train," under various conditions (i.e. at the company's risk, at the owner's risk, and so on) as settled by the Railway Rates Tribunal, in accordance with Section 43 of the Railways Act, 1921, are obtainable from H.M. Stationery Office, Kingsway, London, W.C.2, price 2s. 6d. net, and every consignor of goods by railway should make himself acquainted with these.

## CHAPTER V

### HOW AND WHEN TO CONSIGN : BY PASSENGER TRAIN AND BY POST

BECAUSE of the common practice prevailing amongst the railway companies to carry all kinds of traffic (other than dangerous goods) by their passenger trains many believe that these carriers are compelled so to convey goods, but all that Section 10 of the Fifth Schedule to the Railways Act, 1921, says is this—

10. The following provisions and regulations shall be applicable to the conveyance of perishable merchandise by passenger train—

- (a) The company shall afford reasonable facilities for the expeditious conveyance of the articles classified as perishables, either by passenger train or other similar service.
- (b) Such facilities shall be subject to the reasonable regulations of the company for the convenient and punctual working of its passenger train service, and shall not include any obligation to convey perishables by any particular train.
- (c) The company shall not be under obligation to convey by passenger train, or other similar service, any merchandise other than perishables.
- (d) Any question as to the facilities afforded by the company under these provisions and regulations shall be determined by the Rates Tribunal.

And the articles which have been classified as “perishables” by the Railway Rates Tribunal are these—

#### DIVISION I

##### MILK

##### *Section A*

Milk in cans, churns, or butts.

##### *Section B*

Milk in bottles, packed in cases.

#### DIVISION II

PERISHABLE ARTICLES, NOT TO INCLUDE (EXCEPT IN THE CASE OF LIQUIDS) GOODS CONTAINED IN BOTTLES, JARS OR SEALED TINS

##### *Section 1*

Eels and eels fry.

Fish (e.o.h.p.), including, *inter alia*, Clams, Cockles, Mussels, Whelks, and Winkles.

Ice.

Lampreys.



## DIVISION II—(continued)

## Section 2

Endive.	Nuts, edible.
Fruit (not hothouse), e.o.h.p.	Rhubarb.
Herbs (green).	Vegetable plants.
Mint.	
Vegetables (not hothouse), e.o.h.p., including, <i>inter alia</i> —	
Beans.	Peas.
Marrows.	Pumpkins.
Mustard and Cress.	Watercress.
Yeast (dried or liquid).	

## Section 3

Asparagus.	Mushrooms.
Chicory (blanched).	Sea Kale.
Cucumbers.	Tomatoes.
Melons.	

## Section 4

Bacon and Hams (cured or cooked).	Cocoanut Oil in solid form.
Black puddings.	Confectionery (perishable).
Butter (fresh).	Cream.
Cheese (hard).	Curds.
Cheese (soft).	Dripping.
Eggs for consumption, including eggs sent for the manufacture of food products.	
Fat.	
Fish—	
Char.	Salmon.
Grayling.	Smelt.
Lobsters.	Soles.
Mullet (Red).	Trout.
Oysters.	Turbot.
Prawns.	Whitebait.
Fleat.	
Fruit (hothouse), e.o.h.p.	
Game (dead).	
<sup>1</sup> Horseflesh for human consumption.	
Lard and lard substitutes.	
Margarine.	
Marrow fat.	
Meat (cooked, for human consumption).	
Meat (fresh, chilled, frozen, or <sup>1</sup> salted).	
<sup>1</sup> Meat Offal, including, <i>inter alia</i> —	
Chitterlings.	Feet.
Cow heels.	Giblets.

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<sup>1</sup> Will not be conveyed by Passenger Train or other similar service unless properly packed in boxes, tins or casks, so as to prevent the escape or leakage of the contents or the emission of offensive smells. Horseflesh for human consumption will also be conveyed by such service when sent in truck loads and enclosed in canvas or other similar covering.

Meat Offal—(*continued*)

Heads.	Sheep heads, feet and casings.
Hearts.	Sweetbreads.
Kidneys.	Tongues (fresh or pickled).
Livers.	Tripe.
Ox tails.	Trotters.
Plucks.	

Meat Pies.  
Nucoline.

Nut Food.  
Pigeons (dead).

Plants and Flowers (including, *inter alia*, Cut Flowers, but excluding Plants and Flowers in soil, Orchids and Vegetable Plants).

Polonies.	Sausages and sausage rolls.
Poultry (dead).	Saveloys.
Quails (dead).	Suet.
Rabbits (dead).	Vegetables (hothouse), e.o.h.p.
Rooks (dead).	

Seeing, however, that the railway companies publicly notify their willingness to carry parcels of general merchandise by their passenger trains, they must do so at the advertised rates, and for all and sundry.

## PARCEL RATES AND SPECIAL CONCESSIONS.

These advertised rates are contained either in the company's time-tables or in a specially prepared booklet dealing only with the "Parcels Arrangements," and, in some instances, the publication is called by that name. Most of the leading railway companies, at any rate, publish this booklet, and every traffic man should procure a copy of it from the particular company or companies with which he does business, and study it well, as it is—as its name implies—the key to the charges for parcels by passenger train, in the same way that the General Railway Classification is the key to the charges for traffic by goods train.

There is, for example, one rule which says: "For all distances over 200 miles, the rate for butter, fat, nut food, margarine, nucoline, dripping and lard is that shown for distances not exceeding 200 miles." Why this important concession should be made in favour of those few articles only, it is difficult to understand, but there it is for the benefit of the manufacturers of those different products.

Again, a parcel of ready-made clothing, weighing, say, 56 lbs. is consigned a distance of 250 miles, the charge is calculated on the actual mileage and would be 7s., but if it is a parcel of

nut food (or any of the other articles enumerated above) the charge would be "that shown for distances above 100 miles and not exceeding 200 miles," i.e. 6s. 6d., or 6d. less. But this in passing. The subject of undue preference is dealt with later on. (See Chapter XVI.)

Other concessions of an equally important nature are to be found in the same publication. It is not only impossible but unnecessary to reproduce them all here; each trader must look for those which have special reference to his traffic.

Then there is on page 105 of the "Railway Clearing House Instructions" which provides that—

When more parcels than one are sent to the same person by the same train, they must be charged for separately, except in the case of—

Animal Fat.

Bacon.

Biscuits.

Black Puddings.

Bread.

Butter.

Cakes (except Bride Cakes).

Cheese.

Cheese (Soft).

Christmas Puddings.

Cocoanuts.

Cream.

Crumpets.

Eggs for Consumption.

Fat (Edible).

Fish (including Potted or Preserved Fish, but excluding Live Fish in Tanks).

Flowers.

Fruit, including Hothouse Grapes (except Grapes at C.R. from the Channel Islands).

Game (dead).

Hams.

Ice.

Ice Cream Mixture.

Lard.

Margarine.

Meat (including Potted or Preserved Meat).

Meat Extract.

Muffins.

Mushrooms.

Nucoline.

Peas (Dried).

Pies.

Pigeons (dead).

Pigeons (live), for consumption.

Pikelets.  
 Plants.  
 Plum Puddings.  
 Poultry (live), except to or from Shows.  
 Poultry (dead).  
 Rabbits (dead).  
 Rabbits (live), for consumption.  
 Sausages.  
 Suet (including Shredded Suet).  
 Tripe.  
 Vegetables.  
 Yeast.

in more packages than one, from one consignor to one consignee, the charge for which must be upon the gross weight.

The commodities covered by this regulation, when charged on the gross weight at forwarding station, and split up at the receiving station, must be treated as different consignments.

Mixed consignments are to be charged at the highest rate applicable to any of the articles in the consignment when the total weight is forwarded in various packages, the same as when sent in one consignment.

One example will be sufficient to show how this affects the charging of parcels. Suppose that a soap manufacturer has two boxes of toilet soap, one weighing 14 lb. and the other 10 lb., to send to a customer by passenger train at owner's risk; here is the result in a nut-shell—

	s.	d.
1 box Soap, 14 lb., distance 50 miles, charged separately . . .	1	2
1 „ „ 10 lb., „ 50 „ „ „ „ . . .		11
	2	1
Same two parcels tied together and charged on gross weight . . .	1	6
Difference . . . . .		<u>7</u>

With regard to every other description of traffic, other, that is to say, than those included in the above list, clearly the thing to do, when there are two or more parcels for the same consignee, is to *tie the packages together and make one parcel of them*; then the carriage is calculated on the gross weight of all of them instead of on the separate weight of each of them. This always makes an appreciable difference in the cost of carriage—in the above instance it reduced the company's charge by 28 per cent. Indeed, in practice it will be found wisest to tie together two parcels of any description of traffic intended for the same consignee, because for one thing, there is no fear of the above-mentioned rule being overlooked and separate charges applied to each of them, and,

for another thing, there is, as a rule, less likelihood of pilferage or damage during transit. Heavy packages cannot be thrown about so easily as small ones.

### HOW THE DECLARATION AFFECTS THE CHARGES.

And as with goods traffic, so with passenger train parcel traffic : different rates apply to different descriptions of goods, and there are, therefore, precisely the same reasons why a full and accurate declaration of the contents of a parcel to be forwarded by passenger train should be made. For example, a parcel of periodicals, if declared as such, is chargeable under the "Newspapers and Periodicals" scale, and the carriage on a 12 lb. parcel travelling a distance of 50 miles would be 8d., but if undeclared the ordinary parcel rate would be applied and the carriage would then be more than double, i.e. 1s. 5d. Again, a 28 lb. parcel of ready-made clothing can be sent a distance of 100 miles for 1s. 11d. *if consigned at the owner's risk*, but if nothing is said at the time of forwarding as to whose risk it is to be conveyed at, the company's risk scale is applied and the carriage is then 2s. 10d., or 11d. more.

With regard to valuable articles, such as silks, furs, watches and clocks, scientific instruments and the like, the railway companies are entitled by the Carriers Act, 1830, to demand payment of insurance against the additional risk involved, and the rates of insurance common to all the leading railway companies for goods conveyed by passenger train are also to be found in the afore-mentioned booklet.

On the other hand, the sender is entitled to demand from the railway company a receipt for such a parcel, as Section 3 of the Carriers Act, 1830, says : " Provided always that when the value shall have been so declared, and the increased rate of charges paid, or an engagement to pay the same shall have been accepted as hereinbefore mentioned, the person receiving such increased rate of charge or accepting such agreement shall, if thereto required, sign a receipt for the package or parcel, acknowledging the same to have been insured, which receipt shall not be liable to any stamp duty ; and if such receipt shall not be given when required, or such notice as aforesaid shall not have been affixed, the mail contractor, stage coach proprietor, or other common carrier as aforesaid shall not have or be entitled to any benefit or advantage



under this Act, but shall be liable and responsible as at the common law, and be liable to refund the increased rate of charge."

As to the actual consigning of the parcel, one of the most practical methods is to procure a bundle of consignment notes from the railway company and bind these together at the left-hand side in book form and then write them in duplicate by means of a piece of carbon paper. If this is done, there can be no disputing afterwards as to what was actually on the original note, as all the particulars will be on the duplicate; whereas with an ordinary consignment note-book the details have necessarily to be copied by hand on to the counterfoil, and there is the risk—in a rush—of an error occurring. Moreover, this home-made consignment note-book proves very useful when checking a railway carriage account.

### PASSENGER TRAIN *v.* POST.

In some businesses of course quick delivery is absolutely essential and the trader may have little choice in the selection of the means whereby he will get his goods into his customer's hands—that is to say, he cannot stop to consider whether the post or the rail charge is the cheaper; he *must* forward the package by the first available means—by (say) the next passenger train—even though this may involve a loss of two pence on the consignment. With such special circumstances we cannot, in a book of this description, pretend to deal—they are matters for individual decision; here we can treat of only average cases and with ordinary merchandise traffic. Something will be said later on with regard to unusual or "exceptional" traffics.

The accompanying Table No. 1 shows that the cost of conveyance of a 1 lb. parcel by post or by passenger train, at the owner's risk, a distance of 200 miles, is exactly the same, after which mileage the cost by rail increases by 1d. On a 2 lb. parcel, the additional cost of 1d. operates after a distance of 15 miles. The postage on a 3 lb. parcel, when destined to places far distant, is slightly less than the rail charge at the company's risk, but if the parcel is consigned at the owner's risk a saving can be effected of 1d., 2d., or 3d., according to the distance. A 4 lb. parcel, any distance, by post costs 9d.; by rail at the company's risk the charge varies between 8d. and 11d., according to distance, and at the owner's risk the variation is from 7d. to 9d. Again, a 9 lb. parcel costs 1s. 3d. by post, or if sent

by rail at the owner's risk there is a saving of 7d. on short distances, 4d. on distances from 31 to 100 miles, and above 100 miles the cost by rail is 1s. or 3d. less.

Now take Table No. 2, which compares the cost of forwarding small parcels by goods and by passenger trains at the revised rates. This shows that the means of conveyance, the length of the rail journey, the class of goods forwarded and the risk to be accepted by the railway company, all have a direct bearing on the cost of carriage. Thus, to send a 10 lb. parcel by passenger train, at the owner's risk, the charge would be 9d. for 30 miles, 11d. up to 50 miles, and 1s. between 50 and 100 miles ; or at the company's risk, 11d., 1s. 3d., and 1s. 5d. respectively, for the same distances, but if the goods were classified in Class 18 of the General Railway Classification, the charge for 30 miles would be 11d., for 50 miles 1s., for 75 miles 1s. 2d., and for 100 miles 1s. 3d. Again, a 21 lb. parcel of (say) Class 16 goods, conveyed by passenger train a distance of from 75 to 100 miles, would cost 1s. 6d. at the owner's risk, or 2s. 4d. at the company's risk, but if consigned by goods train at the company's risk the charge would be only 1s. 3d.

### WHAT THE READER SHOULD DO.

Therefore, what the consignor has first to do is to decide whether an expeditious transit is necessary or not. If it is, then he will probably choose the passenger train service. If, on the other hand, there is no urgency about the matter his choice may lie with the goods train service.

What every traffic man who has much small parcel traffic to handle should do is this: secure from the railway company or companies with whom he does business a list of the goods carried by them at the owner's and the company's risk respectively, together with the rates and conditions applicable to the several classes of goods included therein, and prepare two tables similar to the accompanying ones for his own information and guidance when forwarding goods to their various destinations. Ordinary merchandise is charged by the railway companies at their ordinary parcels scale, but unusual traffic—i.e. wreaths, cut flowers, fireworks, gold and silver, paintings, and the like—is charged for at special rates and hence it is impracticable to design tables which would be generally applicable to all classes of goods. Those given



in the inset will, however, be found very useful as guides in designing others for special and particular businesses.

Also, of course, every consignor of goods by passenger train should possess himself of a copy of the new "Classification of Merchandise by Passenger Train," price 6d. net, from the Railway Clearing House, Euston Square, London.

TABLE No. 2  
COMPARATIVE STATEMENT SHOWING COST OF FORWARDING SMALL PARCELS BY GOODS AND BY PASSENGER TRAIN

Weight	By Passenger Train a distance of 30 miles		By Goods Train a similar distance											By Passenger Train a distance of from 31-50 miles		By Goods Train a similar distance											By Passenger Train a distance of from 51-75 miles		By Goods Train a similar distance											By Passenger Train a distance of from 75-100 miles		By Goods Train a similar distance										
	At O.R.	At C.R.	Class 12	Class 13	Class 14	Class 15	Class 16	Class 17	Class 18	Class 19	Class 20	Class 21	At O.R.	At C.R.	Class 12	Class 13	Class 14	Class 15	Class 16	Class 17	Class 18	Class 19	Class 20	Class 21	At O.R.	At C.R.	Class 12	Class 13	Class 14	Class 15	Class 16	Class 17	Class 18	Class 19	Class 20	Class 21	At O.R.	At C.R.	Class 12	Class 13	Class 14	Class 15	Class 16	Class 17	Class 18	Class 19	Class 20	Class 21				
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.					
4	7	9	9	9	10	10	10	11	11	1 -	1 -	1 3	8	11	10	11	11	1 -	1 -	1 -	1 -	1 2	1 3	1 7	8	11	1 -	1 -	1 -	1 1	1 2	1 2	1 2	1 3	1 4	1 10	8	11	1 -	1 2	1 2	1 2	1 3	1 3	1 3	1 6	1 7	2 1				
7	8	10	9	9	10	10	10	11	11	1 -	1 -	1 3	10	1 1	10	11	11	1 -	1 -	1 -	1 -	1 2	1 3	1 7	10	1 2	1 -	1 -	1 -	1 1	1 2	1 2	1 2	1 3	1 4	1 10	10	1 2	1 -	1 2	1 2	1 2	1 3	1 3	1 3	1 6	1 7	2 1				
10	9	11	9	9	10	10	10	11	11	1 -	1 -	1 3	11	1 3	10	11	11	1 -	1 -	1 -	1 -	1 2	1 3	1 7	1 -	1 5	1 -	1 -	1 -	1 1	1 2	1 2	1 2	1 3	1 4	1 10	1 -	1 5	1 -	1 2	1 2	1 2	1 3	1 3	1 3	1 6	1 7	2 1				
12	9	1 -	9	9	10	10	10	11	11	1 -	1 -	1 3	1 1	1 5	10	11	11	1 -	1 -	1 -	1 -	1 2	1 3	1 7	1 1	1 6	1 -	1 -	1 -	1 1	1 2	1 2	1 2	1 3	1 4	1 10	1 1	1 7	1 -	1 2	1 2	1 2	1 3	1 3	1 3	1 6	1 7	2 1				
14	10	1 1	9	9	10	10	10	11	11	1 -	1 -	1 3	1 2	1 7	10	11	11	1 -	1 -	1 -	1 -	1 2	1 3	1 7	1 2	1 8	1 -	1 -	1 -	1 1	1 2	1 2	1 2	1 3	1 4	1 10	1 2	1 9	1 -	1 2	1 2	1 2	1 3	1 3	1 3	1 6	1 7	2 1				
21	11	1 4	9	9	10	10	10	11	11	1 -	1 -	1 3	1 5	1 10	10	11	11	1 -	1 -	1 -	1 -	1 2	1 3	1 7	1 6	2 1	1 -	1 -	1 -	1 1	1 2	1 2	1 2	1 3	1 4	1 10	1 6	2 4	1 -	1 2	1 2	1 2	1 3	1 3	1 3	1 6	1 7	2 1				
28	1 1	1 6	9	9	10	10	10	11	11	1 -	1 -	1 3	1 7	2 2	10	11	11	1 -	1 -	1 -	1 -	1 2	1 3	1 7	1 11	2 6	1 -	1 -	1 -	1 1	1 2	1 2	1 2	1 3	1 4	1 10	1 11	2 10	1 -	1 2	1 2	1 2	1 3	1 3	1 3	1 6	1 7	2 1				
35	1 3	1 9	10	11	11	11	11	1 1	1 1	1 2	1 2	1 7	1 10	2 7	11	1 1	1 1	1 1	1 1	1 2	1 2	1 5	1 6	1 11	2 3	3 -	1 1	1 2	1 2	1 3	1 4	1 5	1 5	1 7	1 8	2 4	2 3	3 5	1 2	1 4	1 5	1 5	1 5	1 6	1 7	1 10	2 -	2 7				
50	1 8	2 4	1 -	1 -	1 -	1 -	1 1	1 2	1 2	1 4	1 5	1 10	2 5	3 6	1 1	1 2	1 3	1 3	1 3	1 4	1 5	1 7	1 9	2 4	3 3	4 3	1 3	1 4	1 4	1 5	1 6	1 7	1 8	1 10	2 -	2 9	3 3	4 11	1 5	1 6	1 7	1 8	1 8	1 9	1 10	2 1	2 4	3 2				
84	2 3	3 2	1 2	1 2	1 3	1 3	1 3	1 5	1 6	1 7	1 9	2 4	3 2	4 9	1 4	1 5	1 6	1 7	1 7	1 8	1 9	2 -	2 3	3 -	4 8	6 -	1 7	1 7	1 9	1 10	1 11	2 -	2 1	2 4	2 7	3 9	4 8	7 -	1 9	1 11	2 -	2 1	2 2	2 4	2 4	2 9	3 1	4 4				
112	2 10	3 11	1 4	1 4	1 5	1 6	1 6	1 8	1 9	1 11	2 1	2 11	3 11	6 -	1 7	1 8	1 9	1 10	1 11	2 -	2 1	2 5	2 9	3 9	6 1	7 9	1 10	1 11	2 1	2 2	2 4	2 6	2 6	2 10	3 3	4 8	6 1	9 1	2 1	2 3	2 5	2 7	2 7	2 10	2 11	3 5	3 10	5 5				





## CHAPTER VI

### STOPPAGE IN TRANSIT AND RE-DIRECTING

THE right of stoppage in transit is highly important and convenient to the seller of goods, as, by exercising it, he can, if he discovers after he has dispatched a parcel by railway that the consignee has become insolvent, stop delivery of it and re-take possession of the consignment; hence the following exposition of the vendor's true position and the process whereby his right herein may be exercised.

#### THE SENDER'S RIGHT OF STOPPAGE IN TRANSIT.

By Section 44 of the Sale of Goods Act, 1893, it is provided that : " When the buyer of goods becomes insolvent, then the unpaid seller who has parted with the possession of the goods, has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price." " A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not." (*Ib.*, s. 62 (3).) " The seller of goods is deemed to be an ' unpaid seller ' within the meaning of this Act : (a) when the whole of the price has not been paid or tendered ; (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise." (*Ib.*, s. 38 (1).)

In the case of the *Queen v. Saddlers Co.* (10 H.L.C. at p. 425) Willes, J., said : " The term ' insolvent ' has been repeatedly construed to apply to a person labouring under a general disability to pay his just debts in the ordinary course of trade and business " ; whilst in *Schotsman v. Lancashire and Yorkshire Railway Co.* (I.R. 1 Eq. 360) it was decided that it is sufficient for the purpose of stoppage *in transitu* to show that the buyer was in such circumstances as not to be able to meet his engagements.

## WHEN TRANSIT BEGINS AND ENDS.

According to Section 45 of the Sale of Goods Act, 1893, "Goods are deemed to be in the course of transit from the time when they are delivered to carriers by land or water, or other bailee or custodier, for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carriers, or other bailee or custodier. If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end." (*Ib.*, s. 45 (2).) "If after the arrival of the goods at the appointed destination, the carrier or other bailee or custodier acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee or custodier for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination of the goods may have been indicated by the buyer." (*Ib.*, s. 45 (3).)

Here are the particulars of an interesting case, which comes within the scope of this latter provision. A Mrs. Elizabeth Morgan, Potato Merchant, of Whitchurch, Shropshire, sued the Taff Vale Railway Co. for £11 5s. 0d., being the value of a truck of potatoes delivered by it to a Mr. Nuth, contrary to her orders. The goods were consigned to Mrs. Morgan's order at Mountain Ash Station, and the day before their arrival an order was given to the defendant company to deliver them to Mr. Nuth. On their arrival, an advice note was sent to Mr. Nuth, and his carter called for the goods. On the same date, however, Mrs. Morgan wrote to the Mountain Ash station agent asking him, if not already delivered, to hold the goods to her order. The defence was that, although this letter was received before the goods had left the railway company's possession, an advice had been sent Mr. Nuth of the arrival of the goods, constituting a "constructed delivery," and that the goods were then held by the railway company, not as carriers, but as bailees; the company was consequently not in a position to stop delivery. The Court upheld this view, and gave judgment for the Taff Vale Railway Co. This shows the importance of issuing the instructions to stop delivery to the railway company at the earliest possible moment.

"If the goods are rejected by the buyer, and the carrier or other

bailee or custodier continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back." (*Sale of Goods Act*, s. 45 (4).) "When goods are delivered to a ship chartered by the buyer it is a question depending upon the circumstances of the particular case, whether they are in possession of the master as a carrier, or as agent to the buyer." (*Ib.*, s. 45 (5).) "Where the carrier or other bailee or custodier wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end." (*Ib.*, s. 45 (6).) "When part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods." (*Ib.*, s. 45 (7).)

In this connection it should be noted that Condition 11 of the "Standard Terms and Conditions of Carriage of Merchandise by Merchandise Train," as settled by the Railway Rates Tribunal in accordance with Section 43 of the Railways Act, 1921, provides that—

The transit shall (unless otherwise previously determined) be deemed to be at an end—

- (a) In the case of merchandise to be carted by the Company, when it is tendered at the usual place of delivery, as defined by Condition 9 hereof, within the customary cartage hours of the delivery district or at such other times as may be agreed between the Company and the Trader.
- (b) In the case of merchandise not to be carted by the Company, or to be retained by the Company awaiting order, at the expiration of one clear day after notice of arrival is given in writing (or by telephone if so agreed in writing) to or at the address of the consignee or, where the address of the consignee is not known, to or at the address of the sender, or where the addresses of both the sender and the consignee are not known at the expiration of one clear day after the arrival of the merchandise at the place to which it is consigned.
- (c) In the case of merchandise to be carried to a siding not belonging to the Company—
  - (i) When it is delivered upon the siding or at the place where by arrangement, the Trader takes delivery ; or
  - (ii) If the consignee is unable through no fault of the Company, or is unwilling to take delivery, at the expiration of one clear day after the receipt by the consignee of notice in writing (or by telephone if so agreed in writing) that the Company are ready and willing to deliver ; or

- (iii) If the consignee is prevented from taking delivery through the act or omission of the Company when the cause which has prevented him from taking delivery has been removed and the merchandise is delivered in accordance with paragraph (c) (i) or on the expiration of one clear day after the receipt by the consignee of notice in writing (or by telephone if so agreed in writing) that the Company are ready and willing to deliver.

### HOW THE RIGHT OF STOPPAGE IN TRANSIT IS EXERCISED.

The notice to the railway company to stop delivery of a consignment need not take any particular form: it may be given either verbally, in writing, or by wire. The point is really covered by Section 46 (1) of the same Act which provides that: "The unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee or custodier in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case, the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer." "When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee or custodier in possession of the goods, he must re-deliver the goods to, or according to the directions of the seller. The expenses of such re-delivery must be borne by the seller." (*Ib.*, s. 46 (2).) In practice, however, it is usual for the railway company to require the vendor who wishes to exercise his right to take re-possession of the goods to sign a typewritten stamped agreement, whereby he undertakes to accept full responsibility for such act, and to relieve the company from any liability in the matter.

The agreement usually takes the form of the accompanying inset.

### THE CONSIGNEE'S RIGHT TO COUNTERMAND INSTRUCTIONS.

From the foregoing it will be gathered that the consignee's claim upon a consignment sometimes commences before the goods are actually delivered to him. As a matter of fact, with goods



# SPECIMEN FORM USED BY THE RAILWAY COMPANIES IN CONNECTION WITH THE STOPPAGE OF GOODS IN TRANSIT OR GOODS DETAINED TO ORDER

\_\_\_\_\_ RAILWAY.

STOPPAGE OF GOODS IN TRANSIT OR GOODS DETAINED TO ORDER.

*Form of Indemnity to be given in the case of stoppage of Goods in transit  
or Goods detained to order.*

To the \_\_\_\_\_ Railway Company.

I \_\_\_\_\_ of \_\_\_\_\_  
We \_\_\_\_\_

(Insert full name and address.)

hereby claim to be entitled to possession of the goods described in the Schedule  
hereto, and I request you the \_\_\_\_\_ Railway Company (hereinafter

referred to as "the Company") to detain or deliver the said goods to my order,

and, in consideration of the Company so doing, I undertake to keep the

Company and every other Railway Company of Great Britain and your and  
their Servants and Agents respectively, harmless and indemnified from and  
against all loss, damage, claims, costs, expenses, and liability however caused,  
made or suffered by reason of such detention or delivery of the said goods or any  
of them or which may otherwise arise out of or in connection therewith. And

I further agree, for the consideration aforesaid, that where the said goods are

detained by you to my order that you may retain whatever lien you are

entitled to exercise thereon, or, where the said goods are delivered to my order,

that I will indemnify you in respect of the loss of any such lien.

Signature of Applicant(s) \_\_\_\_\_

6d.  
STAMP

Date \_\_\_\_\_

Witness—

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

The Applicant(s) must affix a 6d. stamp to this document and then write their  
names in full together with the date across the stamp.

## SCHEDULE OF GOODS, Etc.

Description of Goods \_\_\_\_\_

Date of forwarding \_\_\_\_\_

Name and Address of Sender \_\_\_\_\_

Station from which Goods were forwarded \_\_\_\_\_

Name and Address of Consignee \_\_\_\_\_

Station to which Goods were consigned \_\_\_\_\_



bought "ex warehouse" or "free on rail," his right over them begins directly the sale has been effected by the consignor, whether they have been dispatched from his—the seller's—warehouse (or other place of storage) or not, and—with the single exception of the insolvency of the buyer, the consignee—certainly whilst the parcel is in the course of transit. In other words, once the sale has been effected and the goods have been dispatched, the sender has no further interest in or right over them provided the consignee is solvent. But more of this later. Take the case of *Arrol & Son v. the North British Railway Co.* (25 Sh. Cr. Rep. 257) in confirmation of this. The pursuers, who were brewers, dispatched goods "at owner's risk" to a customer in the North of Ireland, on a through contract by the North British Railway Co. and the Londonderry and Lough Swilly Railway Co. When the goods were on the latter company's line they were burned. The owners sued the North British Railway Co. for damages for the loss. The defence was that the pursuers, the sellers of the goods, had no title to sue, for the Sale of Goods Act says that delivery to a carrier is the same as delivery to a buyer, and that the risk in transit passes to the latter. The Court sustained this defence, and held that at the time of the loss of the property the goods belonged to the customers, and the pursuers, having no further interest in them, had no title to raise action for their loss.

Where goods are delivered to a railway company to be delivered to a particular place, the owner of the goods—who is always presumed by the railway company to be the consignee—may countermand the directions at any moment of the transit and require the railway company to deliver at a different place, and the railway company is bound to carry out the wishes of the consignee.

In the case of *Scotthorn v. The South Staffordshire Railway Co.* (22 L. J., Ex. 121) the plaintiff delivered at a station of that company goods addressed to the East India Docks, London, and paid one sum for their carriage the whole distance. By the practice of that railway company, all goods delivered at that station for London were forwarded on its own line to Birmingham, and from there by the London and North Western Railway Co. Before the goods in question arrived in London, the plaintiff directed a clerk at the London station of the latter company to forward them to another place, which the clerk promised to do. The goods

were, however, delivered according to the original address, and thereby lost, and it was held that the South Staffordshire Railway Co. was responsible for the loss. Platt, B., in delivering judgment, said: "If a carrier undertakes to carry goods from 'A' to 'B,' he does so subject to a right in the owner to countermand the direction at any point of the journey, and though he may be bound to pay the carrier for his trouble, yet the latter has no right to carry them further against the will of the owner of the goods."

The House of Lords decided in the case of the *London and North Western Railway Co. v. Bartlett* (31 L. J., Ex. 92; 7 H. & N. 400) that, although the consignor of goods directs a carrier to deliver them to the consignee at a particular place, the carrier may deliver them wherever he and the consignee agree (but it appears that if there has been a special contract between the consignor and the carrier it would be different). In delivering judgment, Bramwell, B., said: "It would probably create a laugh anywhere except in a Court of Law if it was said a carrier could not deliver to the consignee short of the particular place specified by the consignor. The obvious meaning of the contract is to deliver to the consignee at the place mentioned, unless the consignee chooses, and the carrier is willing, that they shall be delivered somewhere else."

By the way, in the *Scotthorn* case above referred to it was decided that if one railway company receives goods to carry part of the way, and then transfers them to another company to carry to the place of destination, the agents of the latter company are agents of the first company for receiving notice of countermand, and if they receive such notice and pay no attention to it, the first company is responsible for the neglect.

## CHAPTER VII

### THE RIGHTS AND DUTIES OF THE CONSIGNEE

IF goods—in small quantities—are consigned and carried by railway at a rate which includes delivery, it is the practice of the companies to deliver them on arrival at the other end—that is, of course, provided there is a cartage staff kept at the destination station for that purpose and no instructions to the contrary are given at the time of forwarding. But so far as large consignments—truck loads, for instance—are concerned, and parcels consigned “To await orders”; or if the goods have been consigned at a rate which does not include delivery—that is, at a “Station to Station” rate; or yet again, if there is no cartage staff available at the destination station: in any such case the rule is for the railway company to send the consignee an advice note informing him that the goods have arrived and are ready for delivery to him.

### THE RAILWAY COMPANY'S DUTY TO ADVISE THE CONSIGNEE.

That it is the duty of a railway company so to advise the consignee of the arrival of his goods there is not the slightest doubt, for in *Neston Colliery Co. v. London and North Western Railway Co. and Great Western Railway Co.* (1883, 4 R. & C.C., at p. 266) the Commissioners declared that: “It is, we think, ordinarily the duty of a carrier to give notice to persons to whom goods are directed of the arrival of the goods, at all events when delivery is to be taken at the office of the carrier, for the time when they ought to call for the goods is when the carrier is ready to deliver, and he alone is in a position to notify when that is.” Again, in *Mitchell v. Lancashire and Yorkshire Railway Co.* (L.R. 10; Q.B. 256), Field, J., said: “When the goods arrived it was the company's duty to give notice to the consignee of their arrival”; and many other decisions to the same effect could be quoted in verification, but the foregoing will be sufficient to establish the point.

While Condition No. 10 of the “Standard Terms and Conditions of Carriage of Merchandise by Merchandise Train,” as settled by



the Railway Rates Tribunal in accordance with Section 43 of the Railways Act, 1921, provides that—

*The Company shall in every case when merchandise is consigned to a station (which in this Condition includes a siding provided by the Company for general public use) and is not to be delivered by the Company's road vehicle, or barge, or by truck alongside ship, give notice in writing (or by telephone, if so agreed in writing) of arrival to the consignee, or, where his address is not known or he refuses to take delivery, to the sender where it is reasonable and practicable so to do.*

### THE CONSIGNEE'S DUTY TO REMOVE THE GOODS.

On the other hand, it is the duty of the consignee to remove the goods within a reasonable time after their arrival at the destination station. The length of time a railway company ought to allow the consignee to unload and remove a consignment depends, of course, upon the varying circumstances of each particular case. Obviously no fixed rule could be laid down for the government of each and every case; but in *Coxon v. The North Eastern Railway Co.* (4 R. & C.C., 284) the Commissioners held that 48 hours after a consignee receives notice of the arrival of his goods is a reasonable time on the average.

However, this much is certain: if a consignee does not take delivery of his goods within the specified time—which period is always mentioned on the advice note—he very considerably lessens the liability of the company for the safety thereof. The case of *Chapman v. Great Western Railway Co.* (1880, 5 Q.B.D. 278) is a proof of this. In this case the plaintiff consigned a parcel of goods by the defendant company to himself at Wimborne Station, “to be left till called for.” The parcel arrived at Wimborne on 24 Mar., and was placed in the company's warehouse to await clearance, but this building and its contents were burnt down some three days later. The consignee brought an action against the company for the value of the consignment, but the Court decided in the company's favour. In delivering judgment, in which all three judges agreed, Cockburn, C.J., said: “The question is, whether the goods in question are to be considered as having been in the custody of the defendants as carriers—in which case the defendants would be liable for the loss, though not arising from any fault of theirs; or as warehousemen—in which case they would be liable only for want of proper care, which is not

Other weekdays.....a.m. to.....p.m.

GOODS DEPARTMENT.

## REFERENCE

STATION.....19.....

On the expiration of one clear day after delivery of this Notice or after the time when it should be delivered in ordinary course of post, the Merchandise will be held by the Company not as Carriers but as Warehousemen or Wharfingers. After.....p.m. on the.....the Merchandise will be subject to either warehouse, wharfage, demurrage, or siding rent charges in addition to the charges shown hereon.

This Notice shall not be evidence of the condition or of the correctness of the nature, quantity or weight of the merchandise herein referred to.

Signature..... Agent.

[illegible]

(1523)





alleged to have been the case here. The question of where the liability of the carrier ceases—or, rather, becomes exchanged for that of an ordinary bailee for hire—is sometimes one of considerable nicety, and by no means easy of solution.

“The contract of the carrier being not only to carry but also to deliver, it follows that, to a certain extent, the custody of the goods as carrier must extend beyond, as well as precede, the period of their transit from the place of consignment to that of destination. First, there is in most instances an interval between the receipt of the goods and their departure—sometimes one of considerable duration. Next, there is the time which in most instances must necessarily intervene between their arrival at the place of destination, and the delivery to the consignee, unless the latter is on the spot to receive them on their arrival, which, however, is seldom the case. Where this is not the case, some delay, often a delay of some hours—as, for instance, when goods arrive at night, or late on a Saturday, or where the train consists of a number of trucks which take some time to unload—unavoidably occurs.

“In these cases, while, on the one hand, the delay being unavoidable cannot be imputed to the carrier as unreasonable, or give a cause of action to the consignor or consignee, on the other hand, the obligation of the carrier not having been fulfilled by the delivery of the goods, the goods remain in his hand as carrier, and subject him to all the liabilities which attach to the contract of carrier. *A fortiori* will this be the case where there is unreasonable delay on the part of the carrier, if the consignee is ready to receive. The case, however, becomes altogether changed when the carrier is ready to deliver, and the delay in delivery is attributable not to the carrier, but to the consignee of the goods. Here, again, just as the carrier is entitled to a reasonable time to demand and receive delivery, so the recipient of the goods is entitled to reasonable time to demand and receive delivery. He cannot be expected to be present to receive delivery of goods which arrive in the night time, or of which the arrival is uncertain, as of goods coming by sea, or by a goods train, the time of arrival of which is liable to delay. On the other hand, he cannot, for his own convenience, or by his own laches, prolong the heavier liability of the carrier beyond a reasonable time. He should know when the goods may be expected to arrive. If he is not otherwise aware of it, it is the

business of the consignor to inform him. His ignorance—at all events where the carrier has no means of communicating with him—which was the case in the present instance—cannot avail him in prolonging the liability of the carrier, as such, beyond a reasonable time. When once the consignee is in *mora*, by delaying to take away the goods beyond a reasonable time, the obligation of the carrier becomes that of an ordinary bailee, being confined to taking proper care of the goods as warehouseman; he ceases to be liable in case of accident. What will amount to reasonable time is sometimes a question of difficulty, but is a question of fact, not of law. As such it must depend on the circumstances of the particular case.”

#### WHERE “DELIVERY” ENDS.

In passing, the following Condition—No. 9 of the “Standard Terms and Conditions of Carriage,” determined by the Railway Rates Tribunal—should be carefully noted—

When the Company perform the cartage the place of collection or delivery at the Trader's premises shall be the usual place of loading or unloading the merchandise into or from the road vehicles, but the Company shall not be under obligation to provide any power, plant and labour which, in addition to their carmen, may be required for loading or unloading road vehicles at such premises.

#### WHY EARLY INSPECTION OF GOODS IS ESSENTIAL.

Where goods are sent by a carrier to be paid for on delivery, under “Cash on delivery” conditions, the consignee is entitled to a reasonable time in which to inspect the goods before he accepts them, but so far as the great multitude of consignments carried by a railway company is concerned, the collection of the value of the goods does not enter into the transaction. It is, however, the duty of every consignee to inspect his goods within a reasonable time after receipt, and ascertain whether they are in good order. If notification of loss or damage to the consignment is not received within a reasonable time the railway company is entitled to presume that it was delivered in good order.

Thus, in *Stewart v. North British Railway Co.* (1878, 5 Sess. Cas., 4th Ser. 427), a railway company received seventy-seven heating batteries for carriage from Glasgow to Hull for shipment abroad. On arrival at Hull a notice was given to the consignees there, and according to the custom of the Port of Hull, the batteries



were carted by the railway company to the docks, and there left in one of the dock sheds, which was the place of delivery agreed upon between the consignees and the company for all goods addressed to the former. There was no one at the dock sheds to receive delivery on behalf of the consignees, and they made no examination of the batteries, but, relying on information given them by the company's servants, they wrote to the company on the following day—29 Dec. : " Please note that we find nine of the above batteries broken, for which we must hold you responsible." A fortnight afterwards, when they came to ship the batteries, the consignees found twelve more to be broken, and intimated this fact to the company, and that they held the company responsible. In an action against the railway company for reparation, it was held that the note of 29 Dec., and the delay in objecting, raised a presumption that the batteries (other than the nine) had been delivered in good order. The Lord Justice Clerk said : " It seems that the consignees had no one there to receive them. They must take the risk or disadvantage of that ; but one can understand that, arriving late at night, it might not have been very easy perhaps to have anyone there to superintend the landing and delivery. But there was a clear obligation on the consignees next morning at once to look at the state and condition of the articles which had been landed ; and it seems that the men who put them in the shed gave an account of what they found in the way of breakage. It appears that nine of the batteries had been broken and that that had been observed by the railway company's servants who superintended the delivery at the quay " (the note of 29 Dec.) " amounts to acknowledgment of delivery of all but nine ; but these nine they were not prepared to acknowledge. I think we must hold that this is at least *prima facie* an acknowledgment of what they found after examination. It is possible that they took the word of the railway company for it, but if they chose to do so they must stand by it. The goods were in their own shed, and they were entirely at their own risk, and under their own control. It lies with the other party to prove absolutely that it was impossible that those goods could have been broken, except for the fault of the railway company, and I am not quite clear that even that would have been a relevant allegation. I am rather inclined to hold that from the time delivery was taken, and that note was

written, the railway company were entitled to assume that the goods had been examined, whether they had really been examined or not, and they were not bound to make any further inquiry into what took place in the process of transit. The risk had been taken over by the consignees, and it would be putting on the railway company, as carriers, an amount of onus that I think they are not the least bound to bear, if, after giving the customer the fullest opportunity of discovering whether they have fulfilled their contract or not, they were to be asked at an indefinite distance of time to prove that they had delivered the articles safely."

As a matter of fact, the railway companies are becoming more strict than ever over this question of the immediate examination and notification of any loss or damage, which is little to be wondered at, for almost daily fraudulent claims are foisted upon the companies; and it is the knowledge of the fact that unscrupulous folk consider railway companies fair game for plunder that no claim is admitted and paid unless it is backed up by incontestable proof that the damage or loss—as the case may be—did actually occur whilst the goods were in the railway company's possession, and that the company, therefore, is bound to recompense the claimant. The carriers do not say, when such proof of their liability is not given, that the claim preferred against them is unjust. But what they do say is, in effect, this: "We have no proof, nor have you given any proof, that your claim is just. And a claim does not contain within itself evidence of its genuineness." It is, therefore, essential that the consignee should protect himself at the time of delivery in the manner prescribed below, or by adopting some such methods as these.

### SMALL PACKAGES TO BE EXAMINED.

The first thing a consignee should do when a parcel is delivered to him is to submit it to a careful external examination, and, if any irregularity is observed, a note should be made of the fact in the railway carman's book or "delivery sheet," alongside the signature; then the company cannot reject the claim, if it is subsequently discovered that, say, the goods have been damaged by wet and a claim is submitted, on the grounds that "nothing was noticed amiss at the time of delivery," to quote a stock argument of the companies.

If the consignee gives a clear receipt for a consignment carried and delivered to him by a railway company, and he finds on unpacking that the goods have been either damaged in some way or pilfered during transit, the company is almost sure to reject his claim in terms somewhat as follows—

“With reference to your claim for, say, eight tins condensed milk, alleged stolen in transit from one case *ex* London, on the 28th ult., we have made full investigation, but fail to find that the case was tampered with during transit by rail. We find, moreover, that the consignment was delivered to you in apparent good condition, and a clear signature given accordingly. Having regard to these facts we must respectfully decline your claim.”

And unless the claimant knows how to meet this rejection—by replying that the signature was given, not as a guarantee that the parcel was intact, but simply as an acknowledgment of the receipt of the consignment—the company will not yield. But more on the subject of the receipt later.

#### —AND WEIGHED.

And if the parcel is a light one, and will permit of its weight being taken, it should be weighed before the signature is given. From what was said in Chapter III as to how the difference of a lb. will often considerably increase the charge for carriage, the reader will have gathered that it is much to his interest to check the railway company's figures. But there is another reason why the parcel should be weighed. It is this: By this means it is sometimes possible to tell—though not always, as will be shown in a moment—if a pilferage has taken place during the transit for, obviously, if the package has been robbed it will weigh less when delivered than it did when it was dispatched. The weight recorded in the carman's book is that ascertained at the forwarding station, and a comparison can easily be made. When any foreign matter is inserted in the place from which the goods are extracted—as is sometimes done to reduce the possibility of detection, the railway police say—no difference in weight can be noted. But such foreign matter acts as good evidence in proving the claim and should always be preserved, and if required, handed over to the railway company's officers.

In cases where goods are delivered in outward good condition,

and it is discovered on subsequent examination that a robbery has occurred *en route*, or that the contents of the package have been damaged, the carrier should immediately be apprised of the fact, and asked to inspect the parcel and its contents. If this be not done, possibly the claim will be refused because "no opportunity was given the carriers to inspect the damage (or pilferage as the case may be) complained of and so testify as to the accuracy of the statement."

Some of the railway companies—though not many of them, it must in fairness be admitted—act in this arbitrary way, so that it is best to be on the safe side.

With regard to large parcels—bulk consignments, truck loads and the like—clearly the thing to do is to check that the correct number of packages or the exact weight on which carriage has been charged by the railway company, is duly received, and that there is no damage or loss to record.

#### WHAT TO DO WHEN GOODS ARE DAMAGED.

This question is continually arising: is one justified in refusing to accept goods which have been badly damaged in transit? And in view of the number of losses which have occurred from this cause during the last two or three years it will be useful to treat this subject very thoroughly.

Now in determining this question—as, indeed, most if not all matters relating to transport problems—one has to see first of all what are the conditions of the contract between the buyer and the seller and what bargain the latter made with the railway company to convey the goods to their destination. For instance, goods may be purchased on "carriage paid" terms and forwarded at either the owner's or the company's risk, and in that event the liability will remain with the seller until the consignment has been actually delivered into the buyer's possession—which means that the buyer need not worry with the railway company any more than to tell them of the condition of the goods on delivery, leaving the seller to claim on the carriers for the damage done.

On the other hand, goods may be bought "free on rail," and in that event the responsibility for what happens during transit rests with the buyer—in other words, the seller has completed his



part of the contract directly the consignment has been handed to the railway company, or put "free on rail." But it makes a vast deal of difference as to how the sender consigns the goods—i.e. whether at the owner's risk or the company's risk; makes a difference, that is to say, as to the responsibility attaching to the carrier and the owner respectively and in most instances—so far as the railway companies are concerned, at any rate—determines their attitude in the matter.

Incidentally, it is curious, to say the least of it, how often the buyer will omit to tell the seller how he wishes his goods to be forwarded—whether at the owner's risk or the company's risk, and it is only when something goes wrong that it transpires that the consignment has been charged at the owner's risk—contrary to the desire of the buyer—because the railway company hold a *general* owner's indemnity for all *their* goods. As an example, at the Birmingham Assizes Mr. Justice Lawrence dealt with a dispute which had arisen between the London and North-Western Railway Co. and the Oak Tanning Co., Ltd., Walsall owing to the destruction, by fire, of some hides during transit. The railway company claimed £162 2s. 9d., being the balance of an account for the carriage of goods, which was admitted subject to a counter claim.

It was explained that the point at issue was whether an agreement entered into by the consignee or consignor should be acted upon. Consignor gave the company at Whitehaven a general owner's risk note, in the year 1906, and consignee disputed the authority of the railway company to act on the agreement, seeing that they paid the carriage.

For the railway company it was stated that, with one exception, goods from Whitehaven to Walsall were charged at owner's risk rates.

Mr. Justice Lawrence said that in his judgment the goods were carried with the knowledge of the Oak Tanning Co. at owner's risk, and he gave judgment for the London and North-Western Railway on the claim of £162 2s. 9d., and on the counterclaim, with costs.

Now it is impossible to lay down any general rule and say that by doing this or that you will be fully protected no matter what occurs; so much depends upon the particular circumstances—at whose risk the goods were consigned, how long they have been



in transit, and last but not least the extent of the damage. Some there are—as will be shown in a moment—who pin their faith to the decision in *Dick v. East Coast Railways* (4 Fraser 178), and refuse to accept any consignment which is badly damaged. In this case a machine of the value of £100 was damaged while in the custody of a railway company. The consignee refused to take delivery, and sued the carrier for the value of the machine. It was proved that the damaged parts of the machine could be repaired at a cost, according to the defendant's witnesses, of £16, and, according to the plaintiff's witness, of £10, in addition to the expense of an expert to adjust them; but the plaintiff's witnesses would not say that in the result the machine would work satisfactorily. Here it was held that the machine was so much damaged that the consignee was entitled to reject it, and that the carrier was bound to pay the full value of the machine.

Now see what happens if this decision is interpreted literally. Take the case of *J. T. Reynolds & Co. v. Taff Vale Railway Co.*, tried in the Manchester County Court in March, 1920, a case which will be quoted very fully because of its great importance and the inevitable conclusion to be drawn from it. The plaintiff's particulars of claim stated that in August of the previous year the defendants, through their agents at Treorchy and Penrhiwceiber, agreed to convey ten cases of P.W. candles from those places to his premises in Manchester. It was a condition of the contract that the goods should be delivered in good condition. The defendants failed to discharge this obligation, and the goods were damaged to the extent of the claim made.

For the plaintiff it was said that, although the amount in dispute was small, the case was of considerable interest to traders, because it involved a question as to the conditions under which consignees were entitled to reject goods delivered by railway companies in a damaged state. In this case, when the goods were delivered the cases were all damaged to such an extent that the plaintiff wrote to the Great Western Railway Co., which actually tendered the goods, suggesting that they had been pilfered, and pointing out that it was impossible for him to have his warehouse filled with them. On 8th September, the Great Western Railway Co. wrote stating that the cases were remaining on their premises at the owner's sole risk and cost. On the following day the plaintiff

replied that the cases and goods left the premises of the Cambrian Candle Co., of Holyhead, in perfect condition, and that they would have to remain with the railway company until the railway company came to its senses, and that a copy of the letter was being sent to the Board of Trade, as it was about time railway companies were made to act in a reasonable manner. The £25 claim was for 60 dozen lb. at 8s. 4d.

Judge Mellor : " Is it a proper course for a consignee to refuse to accept goods ? I thought you were bound to take the goods and then put in a claim for the amount of the damage done."

Counsel for the railway company : " That is my case."

Counsel for the plaintiff said the point he wished to make was that the cases as delivered were quite unmerchantable from the plaintiff's point as a wholesale dealer. The cases were sold entire as cases, and he submitted that if they were so damaged that dealers would not buy them the consignee could reject them. His authority for this contention was the case of *R. & J. Dick v. Great Northern and North-Eastern Railway Cos.*

The judge remarked that it depended on the extent to which the goods were damaged. If a machine or candles were damaged so as to be quite useless those responsible would have to pay. It would come to the same thing whether the consignees were entitled to reject the goods or not. If the consignee in this case had taken the goods in and then made the claim for the damage he would not have had to answer the counterclaim for warehousing charges between the date of the tender and the present time.

Plaintiff's counsel said that this case differed from many others in that the railway company were asking the plaintiff to do what was unreasonable. He had not room in his warehouse to keep the broken boxes, and it would have meant emptying the contents of every one of them and examining nearly 300 packets, each containing 36 candles, in order to ascertain the extent of the damage. It might have been different if he had been a retailer selling single packets. He sold by the case only. If a case were damaged it was unmerchantable from his point of view. He raised no opposition to the charges for carriage and warehousing if the Court found the company entitled to the charges.

A witness for the plaintiff said that when the goods arrived there were really only the remnants of cases left, out of which candles

were dropping about as the company's boy moved them. Every case was broken, and most of the parcels he could see in the superficial examination he made of each case were loose, broken, and dirty. None of the cases was full to the top. It was unreasonable to ask a wholesaler to spend the time and labour of going through the contents of broken cases in order to claim for those parcels undamaged. There would be nearly 9,000 candles altogether, and they could only have been sold as a job lot. If a customer could have been found he would not have paid £10 for them.

Cross-examined, the witness said it was really no use accepting goods and then making claims against a railway company. The plaintiff had several cases going on for a year and a half, and was now adopting the course of refusing to accept candles damaged in transit. It was not true that the bulk of the candles were undamaged. The plaintiff did not, to his knowledge, inform the railway company that the cases were to be resold as cases, but he never sold them except as cases. The plaintiff never opened any of the cases he sold, but had to give a guarantee that they were perfect and that the contents were in sound condition. It would surprise him very much to hear that anybody was prepared to offer £24 for the cases as they now stood.

For the defence the first witness called was a proprietor and managing partner of oil, grease, soap and candle manufacturers of Manchester. At the request of the defendants, he said, he had examined ten cases of candles. The cases were then all right; they had evidently been repaired. Every case was opened. Not more than one 3 lb. parcel was missing, but perhaps eight or nine packets had been broken. The candles were certainly not unmerchantable. In fact, he was prepared to give £24 for them if delivered to his premises in their present condition by either the railway company or the plaintiff. The total damage would be covered by £1.

A carter employed by the Great Western Railway Co. asserted that only one or two of the cases were damaged in transit, and that plaintiff hardly looked at them.

Other corroborative evidence having been given, the judge said the action had really resolved itself into the ordinary kind of claim for damage done in transit. He was forced to the conclusion

that the evidence for the plaintiff was grossly exaggerated. Plaintiff evidently thought he could reject the goods without making a proper examination and determining the amount of the damage. Against such an offer as that made by the railway company's witness he did not see how he could possibly accept evidence which was admittedly based upon a superficial examination. It was not often in these cases that an expert was ready to produce money in support of his opinion. There would be judgment for the plaintiff for £1 and costs on the claim, and for defendants for £1 15s. 6d. and costs on the counterclaim.

The foregoing shows that it is quite wrong to reject goods on a mere superficial examination, or indeed, at all unless they are so damaged as to render them utterly useless. The safe way, undoubtedly, is to accept the goods—no matter at whose risk they may have been consigned, or what is the condition of them when tendered by the carriers—on the distinct understanding with the railway company that the best possible will be done with the goods in the interests of all concerned—and “delivery is accepted without prejudice to the owner's position.”

### THE BROAD VIEW.

It is essential when dealing with these matters to take the broad view. Of course it is difficult sometimes—when your goods have been smashed to pieces—to look upon the matter calmly and judicially, especially when you feel convinced in your own mind from the condition of your things when delivered to you by the carman that some stupid fellow must have been playing football with them or they could never have got into such a state. But the broad, judicial view is the only safe one to take.

Thus, suppose a consignment be tendered to you in a deplorable condition, and in a fit of anger—which may be quite understandable in the circumstances—you decide, as some do, to “throw the goods back on the railway company's hands,” many things may happen subsequently which will cause you to regret your hastiness. Further loss may occur through an “Act of God,” or by destruction by vermin (rats or mice or both), or the act or accident of a third party, or some other cause for which, as *warehousemen*, the railway company could not be held responsible. Or it may transpire that the goods were—contrary to the belief of the buyer—consigned



at the owner's risk, and in that event the consignee would only be contributing further to his loss by rejecting the goods.

As already stated, so much depends upon the terms of the contract—especially the contract to convey made between the sender and the railway company. And it is certainly unwise to allow the contract to be made by proxy. Thus, the case of *Gould v. South-Eastern and Chatham Railway*, in the Divisional Court, in March, 1917 (123 *L.T.* 256), turned primarily on the question whether a railway carman had authority from plaintiff to sign an owner's risk note for him. There were also some interesting dicta by the two judges as to a railway company's position with regard to consignments improperly packed. It was a claim for damage to a confectioner's show-case of wood and glass during transit from Ramsgate to London. The first defence of the railway company was that the goods were carried at owner's risk on a special contract. At Southwark County Court the judge decided that plaintiff was not bound by the terms of the special contract, and that the ordinary liability of a common carrier applied. Giving judgment on the appeal to the Divisional Court, Lord Justice Atkin said that the evidence of the carman Perry as to what occurred when he called to collect the goods was undisputed. "I told him (Mr. Gould) the glass was not the same rate as the other goods, because it was not properly packed, I said it must be in some sort of frame. He asked me to do my best." The Lord Justice thought that the only way in which Perry, doing his best for Mr. Gould, could get the goods conveyed at all was at owner's risk, and it followed as a matter of law that Mr. Gould had given authority to Perry to sign the owner's risk note, and was bound by its terms. Even apart from the special contract, he could not have recovered, as railway companies were not common carriers of goods insecurely packed. Lord Justice Younger, who concurred, said that the effect of Perry's conversation with Mr. Gould was that the railway company was in the same position as if the goods had been improperly packed without the company knowing it.

### ANOTHER STUMBLING BLOCK.

Another stumbling block which railway traders are frequently coming up against in this connection is the question of the correct carriage charge. It is often found by the trader who has had



his goods smashed in transit that whilst the railway company accept no responsibility and state that the traffic was consigned and carried at the owner's risk, full company's risk rates have been charged in his ledger account, and this makes the poor trader more irate than ever. But legally, at any rate, the railway company's attitude is correct. The point cropped up very prominently in the case of *Sutcliffe v. Great Western Railway Co.* (26 T.L. 205), the facts of which are these. Up to 23rd October, 1907, the defendant company had for many years accepted for carriage cisterns unprotected by packing and without special contract. As these cisterns had projecting levers which were often broken in transit, the defendants and other railway companies gave notice on 23rd October, 1907, that all such cisterns would thenceforth only be carried at owner's risk unless properly protected by packing, and that no alteration in the rate for carriage would be made. In pursuance of that notice the defendants, before accepting a consignment of such cisterns from the plaintiff, which were unpacked, required the words "owner's risk" to be written on the consignment notes. The defendants charged the same rates as before, and would have continued to take the goods, if packed, at their risk. The defendants' general regulations contained a list of things which were carried by special arrangement only, and that list included "articles not packed or insecurely packed, which are consequently liable to damage or loss." Some of the cisterns having been damaged in transit, the plaintiff sued the defendants in respect thereof. Here it was held (Vaughan Williams dissenting) that the condition imposed by the defendants was reasonable and that the defendants were not liable. Held, further, that even assuming that the condition was unreasonable, the defendants were liable only for loss occasioned by the defendants' neglect or default; and that as he had given no evidence of neglect or default he was not entitled to succeed. By this it will be seen that however unfair and unbusinesslike it may appear, a railway company is entitled to charge company's risk rates even if they accept no responsibility.

### REASON FOR GUARDED SIGNATURE.

A further point with regard to the receipt given to the carriers should be noted. It is usual at most of the large railway goods

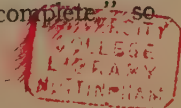


stations for the consignee—or his carman—to be asked when he goes to fetch his goods to sign for them in the company's "Warehouse" or "Counter" book, and, when this signature has been obtained, for a "Yard Pass" to be issued to him authorizing him to go to the truck or warehouse, or wherever the goods may be situated, to take possession of them. *But on no account should an unguarded signature be given.* This is emphasized for this reason. Several cases have been known where the consignees have *afterwards* been refused permission to make any qualifying remark, notwithstanding that, in one instance, the goods had been delivered to the consignee in a damaged condition, and, in another, a truck load of corn was discovered to be two sacks short.

In each and every case—no matter whether the consignee goes to the station to fetch his goods, or whether they are delivered to him at his warehouse by the company's own van—the remark "Quantity and Condition unknown" should be added to the signature; then the company cannot use the "Clean receipt" argument. As Judge Cluer said, in the Shoreditch County Court, in a case which came before him in November, 1913 (referred to at greater length a little further on), and where this question of signature played an important part: "Everybody knows that when a parcel comes in to the place it is simply signed for, and then waits the opportunity of being examined"; but the wise will qualify their signature in the way suggested above.

A full and complete record should be kept of all goods received by rail. On page 100 is a design for a journal which will be found useful for this purpose. If this record be faithfully kept, the tracing of the receipt of a particular consignment—its condition on arrival, the checking of the railway company's inwards carriage account, indeed, every such matter is wonderfully simplified.

The following particulars of two or three test cases where the signature has played an important part will be of interest in this connection. In the Shoreditch County Court, in October, 1917, before his Honour Judge Cluer, a claim was made by Geo. Stuart, of 152 Curtain Road, E.C., against L. Mayer, of St. Stephen's Square, Bayswater, to recover £20 11s., for goods delivered. The defence was partly that of two beds delivered two side-rails were not delivered. The plaintiff, on the other hand, said he had the carman's receipt for the goods, signed "received complete," so



that the question could not be raised now. Judge Cluer asked him why he had such an idea, and the plaintiff said that having got a carman's receipt that the goods had been received in good order, the defendant could not now legally raise the plea that they were incomplete. He argued that if he could, there would be no use or value in a carman's receipt, which, under ordinary circumstances, was considered to be of the greatest value. Judge Cluer characterised this as a ridiculous superstition, and told the defendant he was almost as superstitious as a railway company. They got receipts for goods "received in good order," and considered they were binding, but they were not, all the same. If a parcel of goods was delivered incomplete it had to be completed before the money could be claimed for them, no matter what receipt the firm had from the carman. Bumble had an opinion of the law which might have been right, and it would have been right if that were the law. The plaintiff could not succeed on such evidence, and there would be a verdict for the defendant.

Before the same judge, in the same Court, in November, 1913, Thos. Jas. Dutfield, of 217 Hackney Road, N.E., wholesale leather goods factor, was the plaintiff in an action to recover £5 17s., balance due for goods supplied to Messrs. Bacon, Stone & Co., of 33 Thurloe Place, South Kensington, leather goods dealers. The defence was that the goods were not up to sample. Plaintiff: "He can hardly say that, as there is the carrier's receipt that they were received in good condition." Judge Cluer: "*It is an idiotic proposition to put forward in trade that goods arrived in good condition and up to sample, simply on the carrier's receipt.*" Plaintiff: "There is the signature." Judge Cluer: "*But everybody knows that when a parcel comes into the place it is simply signed for, and then waits the opportunity of being examined.* All the carrier wants is a receipt, and it is useless to say it is any proof that the goods were up to sample." Plaintiff: "Anyway, he displayed them in his window." Judge Cluer: "That may be different. Did you?" Defendant: "For two days." Judge Cluer: "That is acceptance, of course: the carrier's receipt is really nothing in such a case." Judgment for the plaintiff for the amount claimed and costs.

In the same Court, in November, 1914, before Mr. Registrar Wickham, the Standard Glass Co. sued Messrs. Brasch &

Rothenstein, to recover 12s. 6d., the value of glass globes, smashed, it was alleged, through the negligence of the defendants' servants in delivering them at the plaintiffs'. It was explained that the plaintiffs purchased a quantity of glass to be delivered from abroad, and the defendants were the shipping agents. When the cases were delivered one rolled over and smashed the glass now claimed for. The claim was for the invoice price of the smashed glass. Mr. Thomas Elmore, of the plaintiff firm, gave evidence, and said the carman in delivering let one case drop a distance of eight feet. At the time he complained to the carman of his carelessness, and told him that if anything was wrong he should hold the defendants liable for it. He signed the delivery sheet to let the man get away, and then about an hour after he opened the case and found the damage that had been done. He at once communicated with the defendants by letter the same day. For the defence a representative of the firm who appeared said they could not for a moment hold themselves responsible, their contention being that the glass had been delivered in the same state as it had been handed over to them. Then, again, the plaintiffs had signed clean on the sheet, making no remarks as to the fall of a case or possible breakage, and it would be impossible to recognize claims after that. The Registrar, however, said that the case was certainly dropped and—*notwithstanding the clean receipt*—gave judgment for the plaintiffs for the amount claimed.

In the Liverpool County Court, in March, 1914, Messrs. Crossley Brothers were the plaintiffs, and the defendants were the Great Northern Railway Co., Messrs. Lamport & Holt, shipowners, of Liverpool, and Messrs. Thompson, M'Kay, Ltd., carriers and agents, Liverpool. The plaintiffs' claim was for £70, the value of a flywheel sent from Manchester to Liverpool for shipment by Lamport & Holt's steamer to Bahia, which was broken in transit through the joint or several negligence of the defendants or their servants, or alternatively broken in transit in breach of their duty as common carriers by the defendants, either jointly or severally, and also for the carriage of the new wheel.

For the plaintiffs it was explained that the flywheel in question was taken from plaintiffs' works by the railway company, and delivered on the quay at the Huskisson Dock, Liverpool, receipts for its due delivery in good order and condition being given.



Subsequently, however, it was found that two of the arms of the flywheel were fractured, and plaintiffs' case was that this damage was done whilst it was in the custody of the railway company or the carters who acted as their agents. Defendants, said counsel, disputed between themselves as to how and where the damage was done, Lamport & Holt alleging that the fracture was an old one, or that the railway company were responsible because of the way the wheel was delivered on the quay, or, further, that it was damaged in transit; whilst the railway company and the other defendants relied on the clean receipt they obtained for the goods.

Evidence was given to the effect that the machinery was delivered from Crossley's works to the railway company in a perfectly sound condition, and that the engine had been subjected to the severest tests before being sent out. Evidence was also given that the consignment was very carefully handled by both the shipping company—Lamport & Holt—and the carriers—Thompson, M'Kay, Ltd.—and on behalf of the railway company it was argued by counsel that in law they were not liable in view of the carter's clean receipt. But the judge said he must find that the damage occurred whilst the consignment was in the custody of the Great Northern Railway Co., who undertook the carriage at the carriers' risk, and he ordered them to pay the amount claimed, £70 15s.

### THE LAW AS TO COLLECTION AND DELIVERY.

Before leaving this subject of the rights and duties of the consignee the following provisions—Section 49 of the Railways Act, 1921—should be carefully noted—

(1) On and after the appointed day a railway company may collect and deliver by road any merchandise which is to be or has been carried by railway and may make reasonable charges therefor in addition to the charges for carriage by railway, and shall publish in the rate book kept at the station where it undertakes the services of collection and delivery the charges in force for the collection and delivery of merchandise ordinarily collected and delivered.

(2) Any such company may, and upon being required to do so and upon payment of the proper charges shall, at any place where the company holds itself out to collect and deliver merchandise, perform the services of collection and delivery in respect of such merchandise as is for the time being ordinarily collected and delivered by the company at that place:

Provided that the company shall not be required to make delivery to any person who is unwilling to enter into an agreement terminable

by him on reasonable notice for the delivery by the company at the charges included in the rate book of the whole of his traffic, or the whole of his perishable traffic, from the station at which those charges apply.

(3) Where any person does not so agree, the company shall not be required to deliver any of his merchandise, but, if such person fails to take delivery of any merchandise within a reasonable time, the company may deliver such merchandise and make such reasonable charges therefor as it thinks fit.

(4) Any dispute as to whether or not any charge for the services of collection and delivery is reasonable, or whether the length of notice for the termination of an agreement under this section is reasonable, shall be determined by the Rates Tribunal.

## CHAPTER VIII

### THE COMPANY'S LIABILITIES AFTER TRANSIT AND THE COMPANY'S LIEN

WHEN goods have arrived at the end of the journey the railway company is bound to keep them a reasonable time for the consignee to claim and fetch them, during which time the liability of the company as an insurer continues, but after the expiration of a reasonable time its responsibility changes from that of a carrier to that of a warehouseman, who, whilst he is bound to take proper means of securing their safety, has nothing like the same amount of care thrown upon his shoulders. A warehouseman is answerable for injury or loss caused by his own negligence or the negligence of his servants, but he is not answerable for any loss or injury not so caused.

Upon this subject, Condition 12 of the "Standard Terms and Conditions of Carriage of Merchandise by Merchandise Train," as settled by the Railway Rates Tribunal in accordance with Section 43 of the Railways Act, 1921, provides that—

After the termination of the transit, as defined by Condition 11 hereof<sup>1</sup>, unless otherwise agreed in writing, the Company will hold the merchandise as warehousemen, subject to the usual charges and to the condition that they will not be liable for any loss, misdelivery or detention of or damage to—

- (a) Merchandise not properly protected by packing except upon proof that such loss, misdelivery, detention or damage, arose from the negligence of the Company or their servants, and would have been suffered if the merchandise had been properly protected by packing ; or
- (b) (i) Articles or property of the descriptions mentioned in the Carriers Act, 1830, as amended by subsequent Acts ; or  
(ii) Merchandise which has arrived at the destination station and for which the Company give notice that they have not suitable accommodation ;  
by whomsoever such loss, misdelivery, detention or damage may be caused and whether occasioned by neglect or otherwise.

Provided that this Condition shall not relieve the Company from any liability they might otherwise incur under these Conditions in the unloading of the merchandise.

<sup>1</sup> Quoted in full on page 81.

### MISDELIVERY OF GOODS : RAILWAY COMPANY'S RESPONSIBILITY FOR.

In the case of *M'Kean v. M'Ivor* (1870, *L.R.*, 6 *Ex.* 36) it was shown that the traveller of a certain firm represented to his principals that he had obtained an order from "C. Tait & Co., 71 George St., Glasgow," and asked for some goods to be so directed. On arrival of the goods, the defendants, in accordance with their usual custom, advised the consignees. The traveller in question received the notice, endorsed it, and obtained delivery of the goods, which he fraudulently misappropriated. The consignors sued the carriers for damages for the loss of the goods, but the Court held that, as the plaintiffs had themselves directed the parcel to "C. Tait & Co.," and that the carriers had delivered it to someone representing himself to be an agent of that firm, and at the address given, the carriers were not to blame in the matter, the loss being due entirely to the scheming of the plaintiff's own employee. In delivering judgment, Martin, B., said: "I think the carriers obeyed the instructions given to them, and, therefore, for that reason, I am of opinion that they have been guilty of no wrong, because they dealt with these goods in the manner in which they were directed to do. For the purpose of making carriers guilty of a conversion of goods, there must be something beyond this, some fault or some wrong; and in my judgment, it is a question of fact, whether or not their conduct with respect to the delivery of the goods was negligent. If they, by reason of the directions given by the consignor, were naturally led to act as they did, I do not think that would be a conversion; nor would the mere fact of the person who received the goods, not being the person to whom the goods were addressed, there being no such person there, in my judgment make the carriers responsible for a conversion. If the carrier delivers at the place indicated, or does what is equivalent to a delivery there, he does all that he is bound to do; he obeys the sender's directions, and is guilty of no wrong. To make him liable there must be some fault; it is a question of fact whether there has been any such negligence as makes him liable; and where he has carried out the directions of the sender, the mere fact that he has delivered the goods to some person to whom the sender did not intend delivery to be made is not sufficient."

But if goods are misdelivered through the negligence or

misconduct of the company's servants, then compensation can be secured. In *Hoare v. Great Western Railway Co.* (37 *L.T.* 186) such a thing happened—the company delivered a consignment of pollard to the wrong consignee, who would not pay the sender for the goods thus wrongly delivered nor return them to him—and the Court held the company responsible.

In the Wandsworth County Court, in July, 1920, the Great Northern Railway Co. sued T. B. Benton, of Christchurch Road, Streatham, for £42, the value of a consignment of potatoes, which, addressed to a consignee of the same name, had by mistake been collected by the defendant. The evidence showed that the defendant, who is a dealer in farm produce, had purchased a quantity of potatoes in Huntingdonshire to sell as pig food. He was advised by the Great Northern Railway Co. that a consignment of potatoes awaited him at Acton Station, and, acting on this advice, Mr. Benton collected them. Subsequently it transpired that the potatoes had been intended for another Mr. Benton, who succeeded in a claim against the railway company in recovering £42, the value of the potatoes.

The railway company claimed this sum from the defendant, who had offered £22 10s., the price he would have paid for the pig potatoes.

But the judge who heard the case pointed out that the defendant, by paying £22 10s. into the court, had admitted a certain amount of liability. It was not denied that the potatoes were worth at least £7 a ton, and he therefore gave judgment for the railway company for the amount claimed.

In the case of the *Lancashire and Yorkshire Railway Co., London and North-Western Railway Co., and Graeser, Ltd., v. Mac Nicoll* (118 *L.T.* 596), it was shown that the railway company received fourteen drums of phenol, to be forwarded to the order of certain consignees. When the goods arrived at a station near their proper destination they were by mistake and without the authority of the real consignees delivered to the defendant, through his agent at the station, and the defendant appropriated six of them to his own use. He subsequently returned eight of the fourteen to the railway company. The real consignees brought suit against the railway company for misdelivery of six drums of phenol, and recovered £82. In an action by the railway company and the



real consignees against the defendant for conversion, or alternatively for money paid, the defendant proved that he was expecting creosote in casks on another order at the same time, and contended that as the railway company had misled him by delivering creosote, they were estopped from recovering damages for the conversion. The County Court Judge who heard this case in the first place found for the defendant, but on appeal the High Court held that there was no estoppel, and that the defendant was liable for conversion. It was also laid down that dealing with goods in a manner inconsistent with the right of the true owner amounts to a conversion, provided it is also established that there is an intention on the part of the defendant in so doing to deny the owner's right, or to assert a right which is, in fact, inconsistent with the owner's right.

A somewhat unusual case was tried in the City of London Court on 2nd January, 1912, before Judge Lumley Smith, K.C., when Messrs. Chambers & Co. sued the Hygienic Welsh Bread Co. for £14 10s., damages for the improper acceptance of twenty bags of flour. Plaintiffs' solicitor said that on 14th October the plaintiffs were entrusted by J. Fison & Co., Ltd., of Ipswich, with twenty bags of flour to deliver to a baker named Kirks, of Seven Sisters Road. Unfortunately, the carman arrived in the district in the evening, and in the gathering gloom he went to the wrong address, which turned out to be the defendants' shop. The carman saw the defendants' manager, who accepted the flour and signed for it. They afterwards learned that the real buyers had not received the flour, and the mistake was discovered. They applied to the defendants for payment, but could get no answer of any sort from them. Messrs. Fison, who had entrusted the goods to the plaintiffs, had assigned them to the plaintiffs for the purpose of bringing those proceedings. The truth was that the defendants were rather in a poor way, and they were glad to get the flour. Daniel Myers, plaintiffs' carter, said that the mistake was his. He took a receipt for the flour. It was worth £14 10s. Judge Lumley Smith said that the plaintiffs' flour had been improperly left at defendants' place, but plaintiffs ought to show that they had demanded the return of the flour, and that the defendants had wrongfully detained it. Plaintiffs' solicitor said they had done that. Judgment passed for the plaintiffs, with costs.

On the other hand, the Scottish Court held, in the case of *MacDonald v. David MacBrayne, Ltd.* (L. 11 S.L.R. 476), in the year 1915, that if a carrier misdelivers goods, and an accident arises as to the receiver of the goods, the carriers are liable. In the case mentioned, the servants of the consignee of two barrels of paraffin received, along with them, from the carrier a barrel of naphtha which had not been ordered, and which, without ascertaining what their master had ordered, they placed in his store beside the barrels of paraffin. The consignee was subsequently asked to pay the freight to the carriers for the two barrels of paraffin, and before doing so went into his store and ascertained that the two barrels were there. On the end of each of the barrels a description of its contents was stencilled, but neither the consignee nor his servants noticed this. About three weeks after delivery one of the consignee's servants, in the belief that the barrel of naphtha contained paraffin, drew off part of its contents by the light of a candle, and an explosion ensuing, the store and its contents were destroyed by fire. Held in an action of damages at the instance of the consignee against the carriers that the consignee was entitled to recover from the carriers the loss he had thus sustained, and that he was not guilty of contributory negligence in respect of his failure to conduct his business so that the error was discovered.

In the Guildford County Court in March, 1916, an action was brought by the Dressmakers' Cloth Co. against Joseph Clarke, to recover £1 1s. 1d., damages for the conversion of goods on the 3rd December, 1914. It appeared that on the 2nd December, 1914, the plaintiffs dispatched a parcel to Mrs. Clarke, of North Terrace, New Cross Road, Stoughton, and on the same day Messrs. Ashworth, Brown & Co., also of Leeds, forwarded a parcel to the defendant Clarke at Manor Road, Stoughton. The two parcels arrived at Guildford Station during the morning of the following day, and were entered up in the Parcels Delivery Book of the railway company. During the afternoon the defendant called at the Parcels Office and asked if there were any parcels for him. The two parcels were handed to him, and he signed for them. Mrs. Clarke subsequently made inquiries for her parcel, and eventually the plaintiffs discovered the misdelivery. Mr. Clarke was requested to deliver up the parcel, but he denied having received it, and at first stated that Messrs. Ashworth, Brown & Co.

had forwarded his goods to him in two parcels, and afterwards he denied receiving the two parcels, and alleged that the signature for Mrs. Clarke's parcel was not in his handwriting. Counsel stated that the defendant had acted as a most dishonest man in keeping a parcel which did not belong to him, in the hope that the railway company would not be able to prove that he had had it.

### GOODS REFUSED BY CONSIGNEE : COMPANY'S DUTY AS TO.

If a consignment of goods is tendered to the consignee, and he refuses to accept it, the railway company is now bound, by Conditions 15 and 16 of the Standard Terms and Conditions of Carriage, to give the consignor notice of the refusal. On the next page is given a specimen of the form used in this connection.

In the case of *Hudson v. Baxendale* (1857, 27 L.J., Ex. 93) the carriers, on the refusal by the consignee to receive a puncheon of rum, put it into a warehouse, and left it there for two months without giving notice to the consignor. At the end of this period, it was found that a portion of its contents was gone. In an action by the consignor it was held that the carriers had acted in a reasonable manner and were not liable. Bramwell, B., in giving judgment, said : " I doubt if a consignor has a right to impose on a carrier the burden of doing anything after he has tendered the goods. But, assuming that he has, it is sufficient if the carrier does what is reasonable. It was urged that the carrier must inform the consignor if the consignee refuses to receive the parcel. I wholly deny that as a rule of law. There may be cases in which such a course may be reasonable. But in others the consignor may not be known."

In *Crouch v. Great Western Railway Co.* (27 L.J., Ex. 345) a parcel was consigned from London to Plymouth. On its arrival there the consignee refused to pay the company's charges, whereupon the company the very next morning returned the parcel to London. Here the Court held that the railway company was guilty of a wrongful act in sending the parcel, in a time found by the jury to be unreasonably short after the refusal to pay the hire, to a place where it was, as found by the jury, unreasonable to send it.

Crompton, J., in delivering judgment of himself and Cockburn,

## GREAT WESTERN RAILWAY.

In your reply

Goods Department,

--

please quote.

19

On the \_\_\_\_\_ we received from you \_\_\_\_\_  
 consigned to \_\_\_\_\_ of \_\_\_\_\_

The consignee has refused to accept the Goods, stating \_\_\_\_\_

Please supply me, as early as possible, with your instructions for  
 disposal of the Goods ; which are being held by the carriers as ware-  
 housemen, at the owner's risk, and subject to the usual charges for

<sup>1</sup> \_\_\_\_\_

<sup>1</sup> State here whether Demurrage, Warehouse Rent, Wharfage or Siding  
 Rent, as the case may be, is being incurred.

C.J., said: "It may be too much to say that a carrier cannot in any possible case send a parcel back; but, certainly it is very much too strong to say that in every case a carrier can send the parcel back to the consignor on a refusal to pay for the carriage"; and Willes, J., said: "When the parcel was refused at the end of the line they were entitled to retain it in respect of their lien; but they might, if they had chosen, have delivered the parcel, trusting to their action for the recovery of the proper sum for the carriage. They did not think proper to do so, but retained it, and retaining it, it appears to me, they were not entitled to dispose of it as they thought proper themselves. They could not have sent it to any foreign part; they could not have sent it to any part of the kingdom where it would be expensive and troublesome for the plaintiff to go to receive it. I think that those are plain propositions. If so, there must be in effect some duty imposed upon them by law, and that duty is to take reasonable care of a parcel and to deal with it in respect of time and place in a reasonable manner. I entirely agree with what was laid down by the Court of Exchequer in the case of *Hudson v. Baxendale* (27 L.J., Ex. 93). That appears to me to have been the true view of the case, and generally speaking, dealing with a parcel under such circumstances, in a reasonable manner, and keeping it in a reasonable place, would impose upon the carrier the duty of keeping it for a reasonable time, if he had the means of doing it, at the place at which it was originally delivered to be carried to."

In the case of *Irens v. Great Western Railway Co.* (1889, 53 J.P., 148) goods were consigned to a certain station on the Great Western Railway to the order of the consignor himself. On their arrival there an advice note containing the following terms was dispatched to him: "The undermentioned goods consigned to you have arrived at this station. I will thank you for instructions as to their removal hence as soon as possible, as they remain here to your order, and are now held by the company, not as common carriers, but as warehousemen at owner's sole risk, and subject to the ordinary wharfage and demurrage charges." Another stipulation was to the effect that the goods would be subject to a general lien for money due to the company whether for carriage of the goods or other charges, and that in case the general lien were not satisfied within a reasonable time, the goods would be sold and the proceeds



applied in satisfaction of such lien and expenses. The goods remained at the station for a period of two years, when the defendant company sold them to defray its expenses. In the Court below the plaintiff gained the day, the judge holding that as the company did not, *as a general rule*, make a charge for wharfage it had acted wrongfully in this instance; but on appeal this decision was reversed, and in giving judgment, Denman, J., said: "The facts in the unreported case of *Trent Mining Co. v. Midland Railway Co.* are practically identical with those of the present case, and the view taken there by the Court of Appeal was that the fullest notice had been given by the company of their intended charges, and had not been dissented from, and that the goods left with the company raised a contract between the parties. The plaintiff here chose to leave the timber with the defendants after many notices and letters written to him, which he did not answer. He was bound by the terms fully set out in the advice notes, and he has no right to complain that no contract was entered into. The second question is as to the terms of the contract. These terms must be to pay the ordinary charges. The plaintiff said that the defendants had no right to sell the goods in respect of charges, not because the rate of charges in respect of such goods varied, but because there were no ordinary charges at all, and that no charges were ever made to anybody. The evidence is clear to the contrary. It was proved that notice was given to customers of the charges, and they were sometimes insisted on, and sometimes waived. It is not a question for the Court whether or not they were insisted on, but whether or not they were the ordinary charges. It is absurd to say that the plaintiff undertook to pay no charge."

In the case of *Heugh v. London and North-Western Railway Co.* (1870, *L.R.* 5 *Ex.* 51), it was held that the carriers, after a refusal of the goods at the consignee's address, are involuntary bailees, and are only bound to act with reasonable care and caution.

An employé of a firm which had ceased to exist fraudulently gave orders to the plaintiff, in the name of the firm, to forward certain goods to their late address, and availing himself of his knowledge of the mode of delivery of the railway company, and representing himself as the agent of the firm, signed the documents of the railway company and obtained possession of the goods.

In an action for damages by the consignors, the jury found that

the defendants had acted reasonably, and on this finding Kelly, C.B., entered a verdict for them.

The Court of Exchequer (Kelly, C.B., Martin and Channell, BB.) upheld the verdict on the ground—

“ The plaintiffs contend that this was a misdelivery on the part of the defendants amounting to a conversion ; but no sufficient authority has been cited in support of this proposition. It is true that misdelivery by a carrier had been held to amount to a conversion ; but the defendants' character of carriers had ceased, and whatever character they filled it was not that. Their position has been not inaptly described as that of involuntary bailees ; without their own default they found these goods in their hands, under circumstances in which the character of carriers under which they received them had ceased.

“ Under such circumstances, it is a question of fact for the jury whether the defendants have exercised reasonable and proper care and caution.”

In the case of *Mitchell v. Lancashire and Yorkshire Railway Co.* (10 Q.B. 256) on the arrival of flax, an advice note was sent to the plaintiff requiring the removal of the goods as soon as possible, “ as they remain here to your order, and are now held by the company, not as carriers, but as warehousemen, at owner's sole risk, and subject to the usual warehouse charges, in addition to the charges now advised.”

Acceptance was delayed in consequence of disputes as to quality between consignor and consignee, and the flax remained for some two months upon the company's premises. There was no warehouse at the station, the flax was insufficiently protected from the weather, and became entirely spoiled.

Held, by Blackburn and Field, JJ., that the defendants were liable : “ The facts show that the plaintiff agreed that the goods should be held by the defendants in their capacity of warehousemen, and not as carriers at the owner's sole risk. What we have to consider is, whether the defendants can have the benefit of receiving warehouse rent without any liability whatever. Their notice should not be read to mean that they are not to take any care at all. Such an intention should have been made quite clear. The words ‘ owner's risk ’ would have reference to ordinary accidents, but not to improper storage or other negligence on the defendants' part.”

### WHERE CONSIGNEE CANNOT BE FOUND.

If, for some reason or other, the consignee cannot be found—say because the address is insufficient—the practice of the railway companies is to send the consignor an intimation to that effect, and meanwhile the goods are—or rather should be—placed in the warehouse or some other place of safe custody pending the instructions of the sender. In the case of *Metzenburg v. Highland Railway Co.* (1869, 7 Sess. Cas. 3rd Ser. 913) where this consideration arose, the Lord Justice Clerk said: “I do not think they were entitled to put them into a warehouse, or to make the deposit in such a way as to preclude their own power of giving effect to the intimation as to re-address or re-sending which might be given by the party to whom the goods belonged. In this case they took them in custody themselves, and put them into their own warehouse, and there could, therefore, be no difficulty on that head. But, at all events, it appears to me that, until the matter was cleared up, they were in the position of being bound to hold the goods, and bound to hold them in such a situation that they might be disposed of according to the direction of the sender. This is not a description of a case presenting an unusual difficulty as to delivery. There are many other cases in which a similar contingency might happen. There might be an obliteration in the address, or an ambiguity in it, so as to prevent the possibility of delivery. There might be a removal of the trader to whom the goods were consigned. There might be bankruptcy, and the trader might refuse to receive them in consequence of the act of bankruptcy having taken place between the time of dispatch and the time of the delivery. In all such cases, it appears to me to be quite clear that the parties who have undertaken the carriage have impliedly undertaken to see that, in the event of any such contingency intervening, there shall be due care taken in the meantime of the goods, and that there shall be an opportunity given of new directions by the consignor.”

### THE RAILWAY COMPANY'S LIEN.

Previously—that is to say, previous to the revision of the terms and conditions of conveyance of goods by railway by the Railway Rates Tribunal, under the powers conferred upon them by the Railways Act, 1921—the railway companies endeavoured to enforce a general lien upon the trading community, but this

had no legal sanction and gave rise to the case of the *United States Steel Product Co. v. Great Western Railway* (113 L.T. 886), where goods were consigned by the plaintiffs from the United States to T. & Co. in England. The goods were shipped upon a through bill of lading, which provided that they were to be carried to Manchester, and from there to T. & Co., via the defendants' railway, "and the carrier is authorized by the owner to forward by a connecting carrier and upon such conditions as the latter may exact." Before the goods were delivered to T. & Co. that firm became insolvent, whereupon the plaintiffs claimed to stop the goods *in transitu*. The defendants were paid the charges for the conveyance of the goods in question, but as T. & Co. owed them money in respect of the conveyance of other goods the defendants claimed to exercise their general lien—contained in the clause already quoted—as against the plaintiffs on the goods in question.

The five Law Lords who heard the appeal were unanimous in their verdict against the railway company, and the Lord Chancellor in delivering judgment, said: "It was desirable to state how the law stood in relation to the rival claims of unpaid vendors and carriers of goods. Apart from any express contract, it was clear that a carrier of goods, whether by land or sea, had a lien on the goods for their freight, but this right, which arose from the common law, was confined to the carrier's charges payable on the carriage of the particular goods. Such a lien prevailed against the rights of the vendors as well as against those of the consignees. On the other hand a general lien, i.e. a right to retain the goods for other freights due upon other transactions, could only arise by express contract or from general usage and such a lien, apart from contract, could not affect the right of a consignor. In his Lordship's opinion Clause 7 meant that the carriers were to have, first, a particular lien for the special freight and charges applicable to the particular goods, and, secondly, a general lien that would cover all outstanding moneys. Those two liens took their position according to the law; the first had priority over the right of stoppage in transitu, the second had not. It was argued that the fact that the first lien took precedence over the vendor's rights showed that the second was intended to enjoy the same priority. Examination of the clause led him to a contrary conclusion. The first lien was not stated to enjoy those rights, nor did they arise, by virtue



of the contract: they attached to it by the character of the lien itself. In the same way the rights associated with the general lien were also undefined, and, in the absence of express bargain to the contrary, they ranked subsequent to those of the vendor. He entirely agreed with Mr. Justice Pickford that the phrase 'owner of such goods' in Clause 7 covered all persons who under the contract and the bill of lading were entitled to go to the railway company and receive the goods. But it did not follow from this that the general lien of the railway company was a lien to be exercised as against any persons except such owners, or that it defeated rights which were paramount to theirs. The real question did not depend on ascertaining from whom the money was due, but as against whom the claim of retention in respect of such money could be asserted. In his opinion such right could only be asserted against the persons who both owed the money and claimed the delivery, and if a person from whom no money was due was in a position to assert his right to the goods the general lien was inoperative."

But now the Railway Rates Tribunal have given the railway companies a general lien, and this is contained in Condition 14 of the "Standard Terms and Conditions of Conveyance," and reads as follows—

Merchandise delivered to the Company will be received and held by them subject (a) to a lien for moneys due to them for the carriage of and other proper charges or expenses upon or in connection with such merchandise, and (b) to a general lien for any moneys or charges due to them from the owners of such merchandise for any services rendered or accommodation provided in relation to the carriage or custody of merchandise, and in case any lien is not satisfied within a reasonable time from the date upon which the Company first gave notice of the exercise of their lien to the owners of the merchandise, the merchandise may be sold and the proceeds of sale applied in or towards the satisfaction of every such lien and all proper charges and expenses in relation thereto, and the Company shall account to the owners of the merchandise for any surplus.

The general lien conferred by this Condition shall not prejudice an unpaid vendor's right of stoppage *in transitu*.



## CHAPTER IX

### DEMURRAGE

JUST as a trader has a right to require that his goods shall be conveyed to their journey's end with all reasonable dispatch, so has a railway company a right to demand that its wagons shall be unloaded promptly on arrival at the destination stations, and we must confess to having little sympathy with those traders—and there are not a few!—who complain that these carriers are rigidly enforcing their demurrage regulations. You cannot have it both ways—you cannot keep several vehicles of inwards traffic under load for seven or ten days (as many do) and then cry out because the railway companies are unable to supply you with sufficient rolling stock for your outwards goods, or are compelled to put up their rates, or both. The present writer has always held that the practice of regarding railway wagons as first-class warehouse accommodation, and using them as such, was an evil one, and he prophesied years ago that the pernicious system was bound eventually to disappear—largely, at any rate—because it reacted on those other traders who cleared their goods within the specified time, and the fulfilment of this prophecy is gratifying.

### THE LEGAL ENACTMENT.

Now let us consider the strict legal relationship of the trader and the railway company in this connection. To begin with, Clause 11 of the Fifth Schedule to the Railways Act, 1921, empowers the railway companies to charge a reasonable sum for the detention of trucks or the use or occupation of any accommodation, before or after carriage, beyond such period as shall be reasonably necessary for enabling the company to deal with the merchandise as carriers thereof, or the consignor or consignee to give or take delivery thereof; or, in other cases in which the merchandise is consigned to an address other than the terminal station, beyond a reasonable period from the time when notice has been delivered at such address that the merchandise has arrived at the terminal station for delivery, and services rendered in connection with such use and occupation.

Incidentally, it must be pointed out that if a consignment of goods is charged and conveyed at a rate which includes the delivery service—at a “Delivered” rate that is—and the railway company have a cartage staff at the station to which the goods are consigned, it rests with the company to cart the traffic, and in that event no question of demurrage arises; but if the consignment is conveyed at a “Station to Station” rate no responsibility to deliver lies with the railway carriers. Thus, in May, 1914, the Lancashire and Yorkshire Railway Co. brought an action in the Manchester County Court to recover 9s. for demurrage on two railway wagons consigned to Hope Street Goods Station, Salford, in the name of Messrs. Readhead & Co., builders and contractors, of Cheetham Hill Road. For the plaintiffs it was said that although the sum concerned was small the case was important. Section 5 of the plaintiff's Railway Rates and Charges Act empowered them to charge a “reasonable sum” by way of addition to the tonnage rate for certain services rendered at the request of a trader or for his convenience. These two trucks were laden with eighty-five plain deal boards, and arrived at Hope Street Goods Station early on the morning of 8th July. An advice note was at once posted to Messrs. Readhead pointing out that demurrage would be charged if the trucks were not unloaded within two days. Clause 8 of the conditions of the advice note provided that after the termination of the transit, the goods, if not removed within the two days, were subject to charges of demurrage of 3s. per truck per day and 1s. per sheet per day. In spite of this notice the defendants allowed the goods to remain under load for three days beyond the specified time. It was true that Messrs. Readhead's foreman requested the servants of the company to deliver the wood, but he was informed that they were unable to do so, as it was just before the King's visit, and they were very busy. They were not bound to deliver, as the rate paid was only from station to station. In a recent case, in which the North-Eastern Railway Co. were concerned, the Railway and Canal Commission decided that a rate of 1s. 6d. per day, which was now sought to be recovered, was reasonable.

The defence raised was that the railway company could not recover in this case, because in all similar previous transactions with the defendants they had delivered the goods on request, and

had charged for that delivery ; and because, if they had carried out the request to deliver the timber on 10th July, there could have been no charge for demurrage. At the time, the defendants were badly in need of the timber.

Judge Mellow, K.C., in giving judgment for the plaintiffs for the amount claimed and costs, said that in such cases as this railway companies were only in the position of ordinary carriers, and could please themselves whether they delivered from the station to the consignee's premises or not. The fact that when able they did deliver did not oblige them to deliver when they told the consignee their vehicles were all engaged on other deliveries. If consignees, under such circumstances, wished to escape the demurrage charges, they must either take their goods away themselves or get other carriers to do it for them.

As a matter of fact—and this is a point which was apparently not appreciated by either side in the above-mentioned action—a county court judge has no authority to determine a matter of this sort. Indeed, it is clearly provided by Section 5 of the Railway Rates and Charges Acts, 1891 and 1892, that “any difference arising under this section (as to demurrage) shall be determined by an arbitrator to be appointed by the Board of Trade. (See also *Great Western Railway Co. v. Phillips*, page 128, in support of this.) And what the trader should do, when he believes a demurrage charge to be unreasonable, is to give notice in writing to that effect to the railway company who must thereupon—if they desire to press for payment—go to the Railway Commissioners.

### WHO IS RESPONSIBLE FOR TRUCK DEMURRAGE ?

Apart from any special contract providing to the contrary, it is the party who orders the trucks—the consignor who fills them and forwards them by railway—who is responsible for any demurrage which may be incurred at either end of the journey. The first important case deciding this point was *Glasgow and South Western Railway Co. v. Polquhairs Coal Co., Ltd.*, which came before the Ayr Sheriff Court in March, 1914, (*L. 111 S.L. R.73*). Here the pursuers sued for £48 4s. 6d. in the name of demurrage charges on certain wagons which had been used by the defenders for the transport of coal from their collieries at New Cumnock and Drongan to the harbours of Irvine and Troon for shipment. Shortly,

the facts are these : In 1908 the Caledonian, Glasgow and South-Western Railway, and North British Railway Cos. gave notice that on and after 1st February, 1909, demurrage would be enforced in respect of undue detention of wagons against traders, and that the persons giving the orders for wagons would be held primarily responsible for the payment of the charges. A test case was thereafter raised between the railway companies and the coalmasters, in which the coalmasters challenged the right of the railway companies to make such charges. In this case the railway companies were successful in establishing their right to charge demurrage at certain rates, and to make certain conditions as to the use of their wagons, sheets, etc. After that test case was decided there was a general settlement of accounts between the coalmasters and the railway companies, but the Polquhairs Coal Co., among others, settled the claim against them for demurrage with the exception of the sum sued for, which was claimed in respect of demurrage at Troon and Irvine, in connection with traffic which had been consigned to a certain shipping agent there. The defenders maintained that they were not responsible for the demurrage, that the coal was bought at their colliery and that when they put the coal into the wagons and consigned it to the shipping agent they had nothing more to do with either the coal or the wagon, and had no responsibility of any kind in the matter. The railway company, on the other hand, maintained that the Polquhairs Co. had ordered empty wagons for their traffic ; that these wagons were supplied upon the condition that the person ordering them was to be responsible for all the charges, including demurrage, and that no matter what the bargain was between the coal company and the shipping agent, they were entitled to claim from the former all their charges, including the charge sued for.

The case had been pending in Ayr Sheriff Court since June of the previous year. Sheriff Brown issued his judgment in favour of the railway company. He found that the pursuers were entitled to make the stipulation which they did make, and that, as the coalmasters ordered and used the wagons, they were bound to pay the demurrage rates, although the delay might be caused by their customers at the delivery end.

A case somewhat similar to the above—in that it distinctly laid it down that it is the consignor who is liable for the demurrage



charges—came before the King's Bench Division in April, 1917. It was *Great Western Railway Co. v. Dafen Tinplate Co.* (117 L.T. 148), and the plaintiffs, under consignment notes signed by the defendants, conveyed tinplates from the defendants' works at Dafen to various sheds upon the premises of the Swansea Harbour Trust. The route followed was over the plaintiffs' system as far as a certain point. From that point the trucks containing the goods had to be taken over the lines of the Swansea Harbour Trust to the sheds in question on the quay side. The plaintiffs did the haulage over the Harbour Trust lines and placed the trucks at the sheds in a position suitable for discharging, the rate charged by them for conveyance being 2s. 8d. per ton, and the charge made for the haulage services being 3d. over and above the rate. There was never any delay in transit so long as the trucks remained on the plaintiffs' system. But when they passed on to the Swansea Harbour Trust system delays frequently arose from causes which were entirely beyond the control of and which were not caused by any default of the plaintiffs. By a condition indorsed upon the consignment note it was provided that "after the termination of the transit, goods carried by the company will be subject in addition to the charge for carriage to further charges for demurrage. Provided that no such charges shall be made if the company have not given proper opportunity for the removal of the goods or the discharge of the truck."

By a circular letter the plaintiffs gave the defendants notice that in the event of demurrage being incurred upon wagons loaded by the defendants, or upon sheets covering the same, and detained upon the lines of the Swansea Harbour Trust at Swansea, the defendants would be held responsible by the plaintiffs for the payment of such demurrage, the contract of conveyance being with the defendants; and that the railway stock upon the Harbour Trust lines would be treated as upon a private siding, and that the defendants would be allowed four clear days, exclusive of the day of arrival, before demurrage would become chargeable.

The Court held that the contract between the parties was one whereby the plaintiffs agreed to carry partly over their own system and partly over the Swansea Harbour Trust lines, and one which the plaintiffs were bound to accept. It was by and in consequence of the defendants' request that the trucks had to be taken over



the Swansea Harbour Trust lines, where they were detained until it was possible for them to be unloaded at the sheds. The condition in the consignment note that no charge should be made if the plaintiffs had not given proper opportunity for the removal of the goods or the discharge of the trucks only referred to events happening after the termination of the transit, and further, did not refer to a detention of the trucks upon the lines of the Swansea Harbour Trust. The plaintiffs were therefore entitled to recover the sum claimed for demurrage in respect of the detention of the trucks on the lines of the Swansea Harbour Trust.

Held, also, that Clause 5, Sub-clause 4, of Part I of the Order only referred to the detention of trucks before or after conveyance, and therefore did not apply to the case. But the keeping by the plaintiff company of the defendants' goods in their trucks until the consignees to whom, on the defendants' order, they were bound to deliver them, were ready to take them was a service provided and rendered by the company within the scope of their undertaking by the desire of the defendants within the meaning of Part 4 of the Schedule, and the plaintiffs were entitled to recover the demurrage as being a charge under Part 4, it being admitted that the charge was reasonable.

#### **DEMURRAGE NOT PAYABLE IF CONSIGNEE NOT ADVISED.**

By the way, if the railway company omit to advise the consignee of the arrival of his traffic they cannot make him pay if the wagons are not cleared within the proper period. Thus, in the Dunfermline Sheriff Court, on 2nd July, 1913, the North British Railway Co. claimed 7s. 6d. for five days' demurrage on a wagon of sand delivered to William Brown, contractor, Lochgelly. The Sheriff dismissed the claim with expenses and said that he could not hold that delivery of the wagon on a siding which the pursuers knew did not belong to the defender could be regarded as intimation to him of its arrival. There was no necessary room for presuming that the defender knew of the arrival of the wagon. There might be no duty on the carriers to give notice, but they could not hold the consignee in default if, in fact, he was unaware of its arrival, and there were no circumstances which imposed upon him the duty of knowing. In the present case there were no such circumstances. If he (the Sheriff) was right in these contentions, it was

apparent that the plaintiffs never tendered the sand to the defender at all, and the question of the reasonable period for taking delivery did not arise. There was no evidence that the defender delayed unduly to take delivery when he had knowledge of the arrival of the sand.

But, as is made clear in Chapter VII (see page 85), a railway company is bound to advise the consignee of the arrival of his goods, and unless the consignee is so advised the railway company cannot enforce demurrage charges. This was made clear by Sheriff-Substitute Craigie in the Glasgow Sheriff Court on 19th December, 1913, in an action at the instance of the Caledonian Railway Co. against Mr. Charles Ross, coal merchant, 93 Broomloan Road, Govan, Glasgow. The Sheriff found that from March, 1909, to November, 1912, defender had consigned to him many wagons of coal at Govan Station; that the most of these were placed by pursuers in a siding known as No. 12, and a very small number of them in other sidings; that pursuers gave no notice of the arrival of wagons which they had placed in siding No. 12; that it was necessary to give notice to defender as a condition of suing him for demurrage as regards these wagons; and that, as they had failed to prove notice of arrival as regards wagons placed by them in other sidings, they could not insist in the action. He therefore assoilzied the defender with expenses.

The experience of Messrs. W. F. Storey & Son—as described in the case of *Great Northern Railway v. Storey & Son*, tried in the Grantham County Court in June, 1915—is so typical of what many others have had to contend with during the last few years that the decision must be referred to herein.

The railway company sued the firm named for 10s. 6d. for siding rent charges. Defendants counterclaimed 25s. for an unnecessary journey caused through the company's negligence. Plaintiffs' case was that road material was consigned to defendants at Ancaster Station in August, 1914. When it arrived, notice was sent to defendants informing them that if the goods were not cleared in two days siding rent would be charged. The wagons were not cleared, and rent was thus charged after four days. Mr. Storey, in defence, said he ordered four wagons a day to be delivered, but to suit their own convenience plaintiffs kept back two or three, and then would send him seven or eight at a time. Once

they sent him thirty-six wagons in a day. The consequence was that he was bunged up and could not clear them. On 8th August he was carting granite from Hougham Station, but one wagon did not arrive until four days after he had finished hauling and necessitated another journey. After some argument, his Honour said defendant failed in his counterclaim, and as the matter stood he gave the railway company a verdict on the claim, but he did not think they ought to claim it.

Equally interesting and instructive is the case of *Great Northern Railway v. Chas. Thompson*—tried in the Grantham County Court in May, 1918. The company claimed £11 for demurrage on wagons and sheets, whilst the defendant counterclaimed £14 15s. damages sustained by plaintiffs failing to provide accommodation for unloading. Dr. Lindley, in defence, acknowledged that the wagons had not been cleared in the free period, but contended that there were no reasonable facilities provided for unloading them. Since the military platform had been constructed there was practically less than half the road that could be used at the sidings, and every time defendant used his wagons they were delayed, and he could not get delivery of his goods. In consequence of that he had been put to extra expense in carting, amounting to £14 15s. His Honour found that defendant was physically unable to unload most of the wagons within a reasonable time, but there was inexcusable delay in some instances. He gave plaintiffs a verdict for £2 9s. 9d. on the claim, and also a verdict on the counterclaim.

### THE "AVERAGING" PRINCIPLE NOT ALLOWED.

Reference must be made here to the claim which is so often put forward to the effect that a trader should be credited with the time which he saves the railway company by clearing his goods before the allotted time. This was urged in the case of *Caledonian Railway Co., etc. v. Lanarkshire Coalmasters' Association* (27 L.T. 221), and was dismissed by Lord Mackenzie in these words: "It is necessary to refer to an argument used by counsel for the traders in support of what has been called the average principle. This consists in crediting to the trader whatever free time is saved. If over the whole period of a week, or a month, as the case may be, it is ascertained that the total free time has not been exceeded

by the total number of wagons, then, according to the contention, no demurrage is due. This principle, to my mind, is founded upon a fallacy. A trader is not entitled to keep a wagon for the whole of the free time. His duty is to discharge with all reasonable dispatch. If he does this, he does no more than his duty, and is not entitled to credit for the remainder of the free time."

#### RAILWAY CO. RESPONSIBLE FOR DETENTION TO PRIVATE OWNER'S WAGONS.

By Section 6 of the Railway Rates and Charges Order Acts, 1891 and 1892 (now repealed by Section 3 of the Fifth Schedule to the Railways Act, 1921, which has almost identical wording), it is provided that: "Where merchandise is conveyed in trucks not belonging to the company, the trader shall be entitled to recover from the company a reasonable sum by way of demurrage for any detention of his trucks beyond a reasonable period, either by the company or by any other company over whose railway the trucks have been conveyed under a through rate or contract. Any difference arising under this section shall be determined by an arbitrator to be appointed by the Board of Trade at the instance of either party."

In the case of *Charrington, Sells, Dale & Co. v. London and North Western Railway Co.* (12 R. & C.C., 171) it was held that this Section applies to a claim for detention of the trucks during transit, and not only where the detention has occurred before or after transit.

The applicants sent coal in owner's trucks from the collieries to their own sidings in London by the defendants' railway. The distance varied from 100 to 150 miles. In one year, out of a total number of 467 trucks, 425 were delivered in three days or under; and 266 of these in two days or under; the average time occupied being about two and a half working days. The applicants claimed demurrage on thirty-three trucks—nineteen of which had taken four days, twelve five days, one six, and one seven days to perform the journey.

The Court held that, under the then existing circumstances, a *prima facie* case was made out against the railway company whenever a journey occupied more than three days—that being a "reasonable period," having regard to the average duration of the journey. Held, further, that the sum of 6d. per 10 ton truck



per diem was a reasonable sum for detention beyond such reasonable period of three days.

It is also clear from the decision in this case that where the transit is largely in excess of the average, the burden is upon the railway company to prove that there has been no unreasonable detention, for, in delivering judgment, Bigham, J., said: "The detention in each of the thirty-three cases is said to have taken place between the delivery of the loaded wagon at the colliery and the return of the wagon empty to the colliery, that being the journey which the railway company had contracted to make. Nineteen of the journeys were performed in four days, twelve in five days, one in six days, and one in seven days. The thirty-three journeys were performed in the year 1903, and it is proved to us that, taking an average of all the journeys performed by the railway company for the applicants in that year, the time occupied was about two and a half days per journey. The applicants contend that this circumstance entitles them to assume that the railway company had been in default in the particular instances complained of; or, at all events, that the burthen is thrown on the railway company of showing that the circumstances in each case were of such an exceptional character as to justify the apparent excessive detention. It is, I think, clear that in extreme cases the railway company would have to bear this burden, and the question we have to decide is whether the cases complained of are of such an extreme character; if they are, the railway company ought to pay, for they have not been able to prove any exceptional circumstances explaining and justifying the delay."

In *Great Western Railway Co. v. Phillips* (1908, A.C., 101) it was decided that, in ascertaining what sum is reasonable, a wagon is to be regarded as a profit-earning chattel, and it is competent for the arbitrator, in case of difference, to award a reasonable sum for detention, whether the sum claimed would, in an action at law, fall under the head of ordinary or special damage. The arbitrator, therefore, may entertain a claim for damages caused by undue detention of a wagon and for the cost of the hire of another in lieu thereof.

In that case the trader's truck was delayed a few days on its way to Wales, and the trader had to pay 8s. 8d. for the hire of another truck to take its place. This sum the railway company refused to



pay, and offered 6d. a day instead, which it said represented the earning power of the truck per day. The trader brought an action in the County Court to recover the 8s. 8d. paid for the hire of the truck, and the question was whether the County Court had jurisdiction to entertain the case, and the ultimate decision of the House of Lords, reversing the decision of the King's Bench Division and of the Court of Appeal, was that the County Court had no jurisdiction, and that the only tribunal to determine the matter was the Arbitrator of the Board of Trade under Section 6, as the trader's claim for damages for the undue detention of his truck was a claim "by way of demurrage" within the meaning of that section, and that therefore the only tribunal to deal with the claim was the Board of Trade's Arbitrator.

### SIDING RENT.

It is further provided by Section 4 of the Fifth Schedule to the Railways Act, 1921, that: "Nothing in this Act shall prevent the company from making and receiving, in addition to the charges authorized by this Act, charges and payments, by way of rent or otherwise, for sidings or other structural accommodation provided or to be provided for the private use of traders, and not required by the company for dealing with the traffic for the purposes of conveyance, provided that the amount of such charges or payments shall be fixed by an agreement, in writing, signed by the trader, or by some person duly authorized on his behalf, or determined in case of difference by the Rates Tribunal."

In the case of *Midland Railway Co. v. Myers, Rose & Co.* (1908, *W.N.* 80 [*XCIX L.T.* 411]) which raised the question of the right of railway companies to charge rent for coal left at sidings after a certain number of days, known as "Wait Order Sidings," there to await directions as to the ultimate destination to which it was to be dispatched, it was decided that 6d. per truck per day, with three clear days, was reasonable.

Thus, rent is also chargeable on wagons out of or under repair so long as they occupy space in a railway company's siding. This is clear from No. 7 of the Great Western Railway Co.'s Regulations as to private owners' wagons, reproduced on the next page. These "Regulations," it may be added, are common to all the leading railway companies; they vary only in respect of the names

## Great Western Railway

### Regulations as to Private Owners' Wagons

*(Applicable in England and Wales)*

The Great Western Railway Company hereby give notice that the working of Private Owners' Wagons on the Company's Railways is subject to the following Regulations.

1.—The Owners of all new, reconstructed, or converted vehicles intended to work upon the Railway must, before they are brought into use, communicate with the Carriage and Wagon Superintendent, Mr. G. J. Churchward, Swindon, so that he may have them inspected without unreasonable delay, and if built, reconstructed, or converted (as the case may be) in accordance with the Railway Clearing House Standard Specification, register plates as described in the Specification shall be forthwith affixed to each.

2.—The name and address of the Owner or Lessee, the wagon number, tare, and maximum carrying capacity shall be painted conspicuously on both sides of the wagon.

When wagons are let on hire the Lessee will, for the purpose of these Regulations, be regarded as the Owner.

Provided that when the hire is for a term of not less than three months, the name and address of the Lessee shall be painted or exhibited on a board or plate on both sides of the wagon, and that when the hire is for less than three months, the name and address of the Lessee shall either be so painted, or exhibited on a card (other than the wagon label), on both sides of the wagon.

3.—The owners or Lessees, as the case may be, shall keep their wagons in good working condition, and have them properly lubricated and examined and put into good repair before being tendered to the Company for transit.

4.—The Company may remove the register plates from any wagon if wheels, axles, or any other materials of less dimensions or strength than those provided for by the Railway Clearing House Standard Specification are afterwards substituted in contravention of the conditions of the said Specification.

5.—If in transit any defect shall be observed, which for the proper and safe working it is necessary to repair before the vehicles are allowed to proceed further, the Company may, with the consent of the Owners, make such repairs, and charge them with all expenses incurred in effecting the same.

6.—In pursuance of the rules made by the Board of Trade under the provisions of the Railway Employment (Prevention of Accidents) Act, 1900, when it is necessary in the ordinary course of business that any label or direction as to destination or consignee shall be placed upon any railway wagon, such label or direction must be placed on both sides of such wagon; and no Private Owner's Wagon will be accepted for conveyance on the Company's railway unless so labelled or directed on both sides.

All wagon Owners, representatives of wagon Companies and their repairers, when labelling defective wagons at railway stations and depots shall clearly set forth on the labels the station or siding from and to which the wagons are required to travel, and hand in a proper Consignment Note or written forwarding instructions.

7.—When wagons, for the purpose of repair, are required to be shunted into and out of Railway Companies' sidings and/or into and out of premises in the occupation of Private Wagon Repairers, a charge of 1s. per wagon will be made for such services, except where a higher charge is now made, in which case such higher charge shall be the maximum charge under these regulations.

Siding Rent will be chargeable to the Owner or his Agent, in respect of standing room for any wagon detained at a Station or Siding for repairs, at the rate of 6d. per wagon per day, which will be calculated from the expiration of three days, exclusive of the date of advice note, Sundays and Bank Holidays, from the time the wagon is stopped, and to terminate the date the wagon is repaired to the Company's satisfaction and labelled for dispatch.

In the case of a wagon labelled to a Wagon Repairer's Private Siding or a Siding rented by a Repairer from the Railway Company, Siding rent will be chargeable at the rate of 6d. per wagon per day if detained on a Siding belonging to a Railway Company after the expiration of three days exclusive of the date of advice of arrival, Sundays and Bank Holidays.

8.—Any authorized servant of the Company may detain any wagon which may appear to him unfit to run until it has been put into proper repair and passed by one of the Company's wagon examiners or inspectors.

9.—The Company will not be responsible for any damage to Private Owners' Wagons left unprotected in an imperfect state by the Owners nor for any injury that may occur to wagon repairers, who will be required to execute an indemnity before they are allowed to work on the Company's premises.

10.—Private Owners' Wagons running over the Railway Company's lines must not, apart from a reasonable description of the contents of the wagon, be used for advertising purposes, but the Railway Company will not object to a description (to be approved by them) of a product of the Owner's manufacture being painted thereon.

11.—Nothing contained in these Regulations shall prejudice or affect any legal liability to each other of the actual Owners or Lessees of Wagons and the Railway Companies.

**CHAS. ALDINGTON,**

*General Manager.*

*Paddington Station.  
May, 1921.*

of the railway company's particular officers and their official addresses.

### THE DETENTION OF RAILWAY VANS.

There are very few cases reported where the detention of railway vans has been the subject of the action. The most recent are those of *Great Northern Railway Co. v. F. & J. Lelen*, and *Stanley Pibel, Ltd. v. Great Northern Railway*. The application in these cases, which came before Mr. Justice Lush, Mr. Tindal Atkinson, K.C., and Mr. Macnamara in the Railway and Canal Commission Court in June, 1920, related to the period within which railway vans could be detained for the delivery of fish at Billingsgate without extra charge. On 9th July, 1917, the Great Northern Railway Co. and other railway companies gave notice that on and from 1st September, 1917, revised arrangements would be put into operation for the delivery at Billingsgate Market of fish conveyed by goods and passenger train services, and if delivery were not taken within the expiration of two hours from the time when the carman handed in a ticket stating the time of his arrival certain charges would be made. The fish merchants—respondents in the one case and applicants in the other—complained that the charges were unreasonable, unauthorized and illegal. On the other hand, the railway company contended that the charges were legal and reasonable. They said that on the arrival of the fish at Billingsgate the traders, for their own convenience, frequently delayed taking delivery, and in consequence the railway vans were detained for long and unreasonable periods.

On 22nd August, 1919, application was made to the Board of Trade in pursuance of Section 5 of the Great Northern Railway (Rates and Charges) Confirmation Act, 1891, for the appointment of an arbitrator to decide the difference between the parties, and by an Order dated 14th October, 1919, the Minister of Transport appointed the Railway and Canal Commission to act as arbitrator.

After considerable argument on both sides the Court decided that the proper time to allow for entire consignments was two hours and for mixed consignments two hours and a half. The question what were reasonable charges beyond the free period for detention was left open.

## CHAPTER X

### COMPLAINTS AND CLAIMS

EVERY firm receives daily a number of letters from its customers complaining either of delay to and/or damage or loss of goods in transit, the number of such complaints varying, of course, according to the size of the firm and the volume of its business with the various carriers. These letters—as a rule—go automatically to the traffic manager to deal with, as he, having superintended the dispatch of the consignments referred to, is in the best position to look into the complaints and correspond with the different carriers concerned with regard to them.

#### THIS CORRESPONDENCE IS UNPROFITABLE.

Now it is self-evident that the more time and labour there is expended in adjusting these complaints and satisfying the claims of the customers concerned, the less will be the firm's profit on the orders in respect of which the complaints are made. The writer does not for one moment wish to belittle the importance of this matter, for he is fully aware—as a salesman, too—how necessary it is to keep a customer “sweet,” and to let him see that the booking of his orders is not the *sole* object of your house, but that you are just as much concerned to see that the goods are delivered promptly and in good order, and that he receives entire satisfaction *right through the transaction*. But it may be said emphatically that the traffic manager must look at this correspondence from the non-profit-producing point of view, and, whilst he must always be thinking of future business and doing what he can—and frequently he can do a good deal—to influence repeat orders, he must reduce the labour-cost of this work to a minimum.

Here is a system which the writer has evolved to meet his own requirements, and which can be adapted, with any necessary modifications or elaborations, to suit the various and special purposes of readers.



## TRACING SHEETS AND FORM LETTERS WHICH MINIMISE COST OF CORRESPONDENCE.

Immediately on receipt of a complaint a junior clerk records it in a "Complaints" register (as per specimen No. 1); next he attaches a "Tracing Sheet" (as per specimen No. 2), and then fills in on this form the particulars necessary for dealing with the matter. If the customer complains that his goods have not arrived, specimen letter No. 3 is dispatched to the railway company, and an acknowledgment, as per specimen No. 4, is sent to the complainant, to be followed up later on, when proof of delivery has been obtained, with specimen No. 5; or if he complains that only a part of the consignment has arrived, No. 6 is addressed to the railway company.

On the other hand, the goods may have reached the customer in a damaged condition; if so, the specimen letter No. 7 is sent to the company concerned, and the customer's complaint acknowledged according to specimen No. 8 or 9, as the circumstances require. The former of these goes to the customer who states definitely in his complaint how much the loss amounts to, whilst the latter is sent to the complainant who does not give this precise and very necessary information.

It may be that the railway company has made a mistake and charged the consignee with carriage on a parcel which was consigned carriage paid; in such a case Nos. 10 and 11 are used.

Nos. 12, 13 and 14 are self-explanatory—as, indeed, are all of these specimens—and it will be obvious to the reader that by the aid of these form letters an intelligent junior should be able—with very little, if any, supervision—to deal with any complaint, at any rate, in its initial stage.

## A WORD TO THE YOUTHFUL.

For the benefit of the younger readers, it should be said that a customer will be glad if you do not waste words on him but commence in the very first paragraph of your letter to talk about those facts with which he is primarily interested. A complainant does not care whether you "respectfully beg" this, or "beg respectfully" that, but what he *does* care about is, what has become of his goods, or what you are going to do about the loss he has



Specimen No. 1

## SPECIMEN "COMPLAINTS" REGISTER

No.	Date.	Carrier.	Customer's Name and Address.	Digest of Complaint.	Ref. No.

Specimen No. 2

## TRAFFIC DEPARTMENT TRACING SHEET

REF. No. \_\_\_\_\_

DATE \_\_\_\_\_

Consignee : \_\_\_\_\_

Address : \_\_\_\_\_

Date Invoiced.	Items.	Price.	Amount.		
			£	s.	d.
Order No.					

Date dispatched : \_\_\_\_\_ In \_\_\_\_\_ Package

Fully Addressed or Undermark : \_\_\_\_\_

Per Carrier : \_\_\_\_\_

Additional Particulars : \_\_\_\_\_

No. of Credit Note : \_\_\_\_\_ Tracing Clerk : \_\_\_\_\_

## Specimen No. 3

TRAFFIC DEPT.

REF. No.

-----Rly.

-----Dept.

-----Station.

Subject -----

Hence -----

Dear Sir,

We are to-day informed that this urgently-required consignment has not yet been delivered to our customer.

Please have special inquiries made into the matter, the goods delivered and an explanation sent us at the earliest possible moment.

Yours faithfully,

Traffic Manager.

## Specimen No. 4

Wirksworth.

Dear Sir,

This is to acknowledge receipt of your communication to hand this morning, and to say how extremely sorry we are to hear that your consignment has not yet arrived.

Of course the fault rests entirely with the carriers, with whom we have taken the matter up very sharply to-day, and directly we get anything definite from them we will write you again.

Should the parcel come to hand in the meantime, perhaps you will kindly let us know.

Yours faithfully,

Traffic Manager.

## Specimen No. 5

Wirksworth.

We are to-day informed by the carriers that the ----- which we dispatched to you on the ----- was delivered to you on the -----, it being signed for you on your behalf by "-----," and in the

absence of any intimation from you to the contrary, we shall presume that this is so and shall file our papers.

Much regretting any inconvenience to which you have been put through the unfortunate delay,

We are,

Yours faithfully,

*Traffic Manager.*

Specimen No. 6

**TRAFFIC DEPT.**

REF. No.

Mr. -----

----- Dept. ----- Rly.

----- Station.

Subject -----

Hence -----

Dear Sir,

Consignee complains that ----- forming part of this consignment has not yet arrived.

Please have the matter inquired into at once, the missing goods delivered with all speed and an explanation sent us at the earliest possible moment.

Yours faithfully,

*Traffic Manager.*

Specimen No. 7

**TRAFFIC DEPT.**

REF. No.

Mr. -----

----- Dept. ----- Rly.

----- Station.

Subject -----

Hence -----

Dear Sir,

Consignee advises us to-day that this consignment arrived in a damaged condition.

Will you therefore please have inquiries made into the matter, as a claim will follow directly the full extent of the loss is ascertained.

Yours faithfully,

*Traffic Manager.*

## Specimen No. 8

Dear Sir,

We take every possible care to ensure that the goods which we send to our customers shall reach them in a perfect condition, and hence it is that we are extremely sorry to hear that your consignment reached you in a damaged state.

We have taken the matter up with the carriers this end with a view to securing compensation, and shall be glad if you will in the meantime kindly let us know whether anything was noticed amiss at the time of delivery, and if so whether you pointed this out to the carrier's man, also what signature you gave for the parcel.

As you will be aware, these particulars are necessary when pressing a claim of this kind.

Yours faithfully,

*Traffic Manager.*

## Specimen No. 9

Dear Sir,

We take every possible care to ensure that the goods which we send to our customers shall reach them in a perfect condition, and hence it is that we are extremely sorry to hear that your consignment reached you in a damaged state.

Please advise us immediately you have ascertained the full extent of the loss, and we will at once claim compensation from the carriers, whom we are advising of the occurrence to-day.

And when replying kindly say whether the irregularity was noticed by you at the time of delivery, and if so whether you pointed it out to the carrier's man at the time ; also tell us what signature you gave for the parcel. As you will probably be aware, these latter particulars are necessary when pressing a claim of this kind.

Yours faithfully,

*Traffic Manager.*

## Specimen No. 10

**TRAFFIC DEPT.**

REF. No.

Mr \_\_\_\_\_

\_\_\_\_\_Dept. \_\_\_\_\_Rly.

\_\_\_\_\_Station.

Subject \_\_\_\_\_

Hence \_\_\_\_\_

Dear Sir,

This consignment was plainly consigned carriage paid, but our



customer complains that carriage was demanded from him. Please have the amount refunded with a suitable explanation and debit our account with the charges in the usual way.

Yours faithfully,

*Traffic Manager.*

**Specimen No. 11**

It was a mistake for the Carriers to charge you carriage, as the consignment was of course sent "Carriage Paid."

We are sorry that you have been bothered in the matter, and we are instructing the carriers to have the amount refunded to you at once.

If you do not get immediate repayment, kindly advise us.

Yours faithfully,

*Traffic Manager.*

**Specimen No. 12**

**TRAFFIC DEPT.**

REF. No.

To \_\_\_\_\_

\_\_\_\_\_ Dept. \_\_\_\_\_ Rly.

\_\_\_\_\_

Subject \_\_\_\_\_

Hence \_\_\_\_\_

This consignment consisted of \_\_\_\_\_ but we are to-day advised that you have delivered \_\_\_\_\_

Please make immediate inquiries into the matter, have the correct goods delivered to our customer and a reply sent us at the earliest possible moment.

Yours faithfully,

*Traffic Manager.*

Specimen No. 13

YOUR REF.

TRAFFIC DEPT.

OUR REF.

-----Rly.-----Dept.

-----Station.

Subject-----

Hence -----

Dear Sir,

We are anxiously waiting to hear from you hereon. Please let us have your reply per return.

Yours faithfully,

*Traffic Manager.*

Specimen No. 14

YOUR REF.

TRAFFIC DEPT.

OUR REF.

To-----

Date-----

Dear Sir(s),

FREIGHT RATES-----to-----

Will you please quote us per return your lowest freight rates for the conveyance of -----

-----  
between the above mentioned places, stating at the same time whether the rate is per ton weight or cubic measurement; also what is the minimum and the shipping charge.

Yours faithfully,

*Traffic Manager.*

sustained? Therefore, plunge straight away into your subject and adopt your customer's point of view as to the seriousness of the affair, whatever it may be. If he says the delay in transit was a scandalous one, agree that it was so, whether it was or not, and you will please him; tell him that he has no cause to grumble and you will get his back up at once.

In short, remember: By being brief and to the point you show intelligent consideration for all concerned, and by agreeing to what is said you show good manners and good salesmanship. That is the whole thing in a nutshell.

### RECORDING THE PARTICULAR LETTERS SENT.

So far as the actual make-up of the letters themselves is concerned, all those for sending to the railway company can be printed and set out exactly as shown in the specimens, with blank spaces for the filling in of the necessary particulars, a convenient size being 8 in. by 5 in.; whilst the letter for sending to the customers can be in imitation typewriting and on 8vo size paper, so that all the typist has to do is to fill in the customer's name and address. In each and every case a note must be made on the "Tracing Sheet" to say which of the several form letters have been used, thus: "No. 3 to Great Western Railway, and No. 4 to consignee."

Or, alternatively, the letters to the railway company can be written in duplicate by means of a pencil and a piece of carbon paper, and the letters to the customers can be typewritten each time from these stereotyped forms, and the copies of both letters—the one to the railway company and the one to the customer—clipped to the "Tracing Sheet," so that it can be seen at a glance exactly what has been done. It is purely a question of taste—and, of course, expense.

Another point: If it is the system of the house to have one folder only for the whole of the correspondence with reference to each customer, a form as per specimen No. 15 (see p. 142) will be found useful, as it can then be seen by anyone who goes to the folder that the Traffic Department has some matter in hand with reference to a particular order, and that the correspondence dealing therewith is, for the time being, retained by that department.

Specimen No. 15

TO BE KEPT IN FOLDER.
--------------------------

Date \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

For information concerning order No. \_\_\_\_\_

Refer to Papers \_\_\_\_\_ in Traffic Section.

**WHO SHOULD CLAIM, AND WHERE.**

Strictly and legally speaking, it is the *owner* of the goods who should make the claim upon the railway company, and as the consignee is, in the great multitude of cases, the real owner of them (as to which see Chap. VI), it is he—the consignee—who should, therefore, deal with the carriers in this respect, or, in the event of the claim going into Court, the claimant may be non-suited. Thus, in *Arrol & Son, Ltd. v. North British Railway Co.* (25, *Sh. Cr. Rep.* 257) the pursuers, who were brewers, dispatched goods “at owner’s risk” to a customer in the North of Ireland, on through contract by the North British Railway Co. and the Londonderry and Lough Swilly Railway Co. When the goods were on the latter company’s line they were burned. The owners sued the North British Railway Co. for damages for the loss. The defence was that the pursuers, the sellers of the goods, had no title to sue, for the Sale of Goods Act says that delivery to a carrier is the same as delivery to the buyer, and that the risk *in transitu* passes to the latter. The Court sustained this defence and held that, at the time of the loss, the property in the goods belonged to the customers, and the pursuers, having no further interest in them, had no title to raise action for their loss.

But, in practice, the consignee as a rule complains to the sender

and asks him to claim, he wrongly believing that, as the carriage was prepaid (as is often the case), the claim must necessarily be made at the forwarding station by the consignor. Claims so made—that is to say, by the consignor on the forwarding company—are investigated forthwith, and the great bulk of them dealt with as though they were quite in order, some being paid and others declined, according to the evidence adduced; but it must not be overlooked that a railway company can, if it chooses, refuse to accept a claim from the sender of the goods.

### TIME WITHIN WHICH A CLAIM SHOULD BE MADE.

It is impossible to lay down a general rule for the preparation and presentation of any and every claim against a railway company. Obviously, the form a claim should take depends upon the circumstances under which it is made; but there are certain regulations which the claimant must observe in order that success may attend him in this direction.

First there is Condition 8 of the "Standard Terms and Conditions of Conveyance," settled by the Railway Rates Tribunal under Section 43 of the Railways Act, 1921, which provides as follows—

The Company shall not be liable—

- (a) (i) For loss from a package or from an unpacked consignment, (ii) For damage, deviation, misdelivery, delay or detention, unless they are advised thereof in writing (otherwise than upon any of the Company's documents) at the forwarding or delivering station or at the District or Head Office of the forwarding or delivering Company within three days and the claim be made in writing within seven days after the termination of the transit of the consignment or the part of the consignment in respect of which the claim arises.
- (b) For non-delivery of the whole of a consignment or of any separate package forming part of a consignment addressed in accordance with Condition 1 hereof, unless they are advised of the non-delivery in writing (otherwise than upon any of the Company's documents) at the forwarding or delivering station or at the District or Head Office of the forwarding or delivering Company within 14 days, and the claim be made in writing within 28 days after receipt of the consignment by the Company to whom the same was handed by the sender.

Provided that if in any particular case a trader before action brought proves to the satisfaction of the Company, or, where the Company are not so satisfied, of the Railway Rates Tribunal, that it was not reasonably possible for him to advise the Company in writing or to make his claim in writing within the aforesaid times, and that such advice or claim was given within a reasonable time the Tribunal may if having



regard to all the circumstances they consider it equitable declare that nothing in this Condition shall be a bar to the maintenance of proceedings against the Company.

But when a parcel of goods is damaged in transit it is always best to submit the claim for the damage or loss sustained to the railway company at the earliest possible moment—the same day as the goods are delivered, if possible ; certainly within 48 hours—so that the matter may be investigated without delay.

Neglect to do this very often brings a “ turn-down ” from the railway company to the effect that “ as the attached claim was not made within the specified time, it is regretted that no liability can be admitted ” ; an answer which, under the circumstances, the company is fully entitled to make.

In June, 1914, Messrs. R. C. Fraser, James Street, Liverpool, sued the London and North Western Railway Co. for the non-delivery of a cylinder, which left Bolton on 25 June, 1912. The railway company, it was stated, had received no complaint of non-delivery until May, 1913, eleven months later. The company denied liability, and it was pointed out that, under Clause 3 of the consignment note : “ No claim in respect of goods lost or damaged during the transit for which the company may be liable will be allowed unless the same be made in writing within three days after the delivery of the goods in respect of which the claim is made, such delivery to be considered complete at the termination of the transit, as specified in Condition 6, or in the case of non-delivery, fourteen days after the dispatch.” Under this Clause the Judge dismissed the claim and allowed the company costs.—(*Railway and Shipping Journal*, July, 1914.)

Again, at Marylebone County Court on 18 Nov., 1913, the Adnil Electric Co., Ltd., of Artillery Lane, London, sued the Great Western Railway Co. for £17 10s., damage done to two electric fans. The fans, packed in two cases, were delivered at the Guildhall, Plymouth, where plaintiffs were engaged in carrying out a ventilation contract. The cases remained in the yard behind the hall for four days, when they were removed into the building. On the cases being opened, five days later, the fans were found to be smashed. For the railway company, it was submitted that in face of the condition on the consignment note—that claims for damage must be made within three days of delivery—there was no case to go to the jury. The

Judge said there must be judgment for defendants. He held that the condition attached to the consignment contract was a reasonable one.

During the last few years this "time limit" clause has been the subject of many High Court actions—e.g. *Barnard v. London and South-Western Railway*, *O'Keefe and Others v. Great Western Railway*—and the decision has always been that unless the trader makes his claim within the stipulated time—i.e. three days for damage or loss, and fourteen days for short delivery—no liability attaches to the railway company. Take the latter case—*O'Keefe and Others v. Great Western Railway*, decided in the King's Bench Division on 19th March, 1920—as a typical instance of what happens if a claim be not made within the specified time. The facts of this case are fully stated in the judgment of Mr. Justice Darling, who said: "In this case the plaintiffs confided to the defendants for carriage and delivery to Messrs. Spiers & Pond two casks of wine. One of them was brought to the place where it should have been delivered. The plaintiffs, Messrs. Spiers & Pond, had fixed their gangway for the wine cask to be slid down, and it was the duty of the defendants' servant to slide the cask over the edge of the van so that it might be taken charge of by the plaintiffs' servants. The cask fell and was broken and all the wine was lost.

"I find as a fact that this occurred by reason of the negligence of the defendants' servant, by his mis-management of the cask, and was not due in any way to any misconduct on the part of Messrs. Spiers and Pond's men. I assess the damages caused by that accident at £176 18s. 0d.

"In ordinary circumstances that would be judgment for the plaintiffs; but this wine was carried subject to certain conditions. The condition which really applies here is Condition 3, which says: 'the company shall not be liable for loss from or for damage or delay to a consignment, or any part thereof, unless a claim be made in writing within three days after the termination of the carriage of the consignment,' and so on. Then they are not liable for 'non-delivery of a consignment unless a claim be made in writing within fourteen days after its receipt by the first contracting company.'

"Counsel for the railway company has contended that these conditions are reasonable. He also says that whether they are

reasonable or not does not arise, because they are merely conditions regarding the procedure which must be observed before a plaintiff can succeed in an action such as this. Certainly there is the statement of Lord Parmoor regarding this very Condition 3 in the case of *Great Western Railway Co. v. Wills* (116 *L.T.Rep.* 615 : (1917) *A.C.* 148), in his speech at page 168 to this effect: 'Condition 3 further provides 'or in the case of non-delivery of any package or consignment within fourteen days after dispatch.' A provision of this character is obviously necessary where there has been a non-delivery of a package or consignment, or, in other words, where there has been a loss of the whole package or consignment.' So Lord Parmoor there holds that it is 'obviously necessary'—which would certainly cover its being a reasonable condition. He also says on the same page: 'Condition 3 is a rule of procedure which limits the time within which a claim must be made in respect of goods for loss or damage during transit.' If it were merely procedure, and was not necessary to limit the liability of the company in regard to receiving and forwarding goods, then the question whether it is reasonable or not would not arise; but Lord Parmoor seems to have decided both things so that it was procedure and also that it was reasonable.

"For myself, I think that the condition hardly goes beyond procedure; but I refrain from holding this. I hold that the Condition 3, and the others which are relied upon, 4, 5, and 6 (they are all almost immaterial) are reasonable, and that the plaintiffs had not complied with them, particularly with regard to Condition 3.

"I think that really this point as to whether this Condition 3 is reasonable or not is concluded by the judgment of the Court in *Lewis v. Great Western Railway Co.* (1860, 5 *H. & N.* 867). I point out that in that case the declaration was for negligence. Counsel for the plaintiffs contends that these conditions do not apply so as to limit the liability of any carrier who is liable for neglect in delivering goods. This action, says Mr. Gregory, is brought for negligence in delivering goods. So was *Lewis v. Great Western Railway Co.* That appears quite plainly in the declaration itself, and in the sixth plea, which says that the neglect and default, supposing that there were neglect and default, were not wilful. Now here there is no allegation that the neglect and

default were wilful, and therefore it seems to me this case is on all-fours with *Lewis v. Great Western Railway Co.*

“ In that case Pollock, C.B., said this : ‘ The company wishing to guard against any allegation of neglect ’—the very words ‘ in the delivery of goods confided to them, require that when the goods are delivered they shall be promptly examined and complaint at once made if there is occasion for it. Such a condition is perfectly reasonable.’ Channel, B., held the same. He says : ‘ I entertain a strong opinion that the condition set out in the fifth plea is reasonable.’ Bramwell, B., said this : ‘ I am clearly of opinion that the conditions are reasonable. As to the first, I think seven days ample time for sending in a claim of such a nature as that in this action, and, if not, the parties should have objected at the time when the contract was made.’ Here the time is not seven days—it is fourteen days ; so that the condition here is twice as favourable as that which the Court in *Lewis v. Great Western Railway* decided to be a reasonable condition.

“ In these circumstances I come to the conclusion, and I hold as a fact, that Condition 3 is reasonable.

“ It is claimed upon the dates given that *the plaintiffs’ claim did not comply with the condition, that they did not make their claim until long after fourteen days had expired*, and, therefore, that they had not performed either that part of the condition which requires a claim within three days or that part of it which requires a claim within fourteen days.

“ In these circumstances, although, as I say, I come to the conclusion that the cask was ruined and the wine lost by reason of the negligence of the defendants’ servant, *I think that the defendants are protected by the contract in writing into which the plaintiffs entered with them, and therefore that, there being no breach of that contract in the sense that the plaintiffs did not observe it themselves and make their claim in a proper time, within the contract time, judgment must be for the defendants.*”

In this connection see also *David Roberts & Sons v. London and North-Western Railway Co.*, tried in the Ruthin County Court, and reported on page 173.

## A SPECIMEN CLAIM.

A claim, like a letter to a railway company, should contain full particulars of the consignment to which it refers. If, for example,

it is for goods smashed, and the case containing the articles was one of a number, this should be mentioned. Also the station from which the consignment was sent, as well as the date of dispatch should be given; indeed, every available fact should be included, as the railway companies appreciate fullness of detail, for the reason that it enables them to place the claim under investigation without any delay.

Here is a very good specimen claim to go by—

SPECIMEN CLAIM								
<p>The Great Western Railway Co., Paddington Station.</p>		<p>October 20th, 19</p>						
<p><i>Drs. to</i> MESSRS, SMITH &amp; SMITH, Edgware Road, London.</p>								
<p>To value of 8 × 3 lb. Jars Strawberry Jam smashed in transit in 1 cask, part of a consignment of 5 casks consigned to Robinson, London St., Reading, per consignment note 265 to Paddington Station, 18th inst.</p>		<p>£</p>	<p>s.</p>	<p>d.</p>				
<p>8 × 3 lb. Jars Strawberry Jam at 4s. each . . . .</p>		<p>1</p>	<p>12</p>	<p>0</p>				
<p>Salvage . . . .</p>		<p></p>	<p>2</p>	<p>6</p>				
<div style="border: 1px solid black; display: inline-block; padding: 5px;"> <p><i>Reference No.</i> C. 2694.</p> </div>		<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; border-right: 1px solid black; padding: 5px;">£</td> <td style="text-align: center; border-right: 1px solid black; padding: 5px;">1</td> <td style="text-align: center; border-right: 1px solid black; padding: 5px;">9</td> <td style="text-align: center; padding: 5px;">6</td> </tr> </table>			£	1	9	6
£	1	9	6					
<p>Kindly acknowledge receipt of this claim, and note :</p> <p>This confirms our customer's complaint at the time of clearing the goods. The damaged goods have been inspected by your representative at Reading.</p>								

Note the fullness of detail which characterizes this claim. On receipt of a statement of this kind the station-master knows in a moment just what has been done, and will immediately pass the account, together with his report, to the company's agent at the other end for his observations—and so on, through a set course of procedure, until the matter is finally disposed of.

On the opposite page will be found a specimen of a useful register for recording these claims and their subsequent disposition.





## CHAPTER XI

### PRODUCTION AND DISCOVERY OF DOCUMENTS

THE right of a trader to compel a railway company to disclose their documents in relation to a particular transaction is an exceedingly useful one, as on many occasions he can, by exercising it, satisfactorily establish his claim for loss or damage in transit, or equitable rates—or whatever his demand may be.

#### WHEN “DISCOVERY” SHOULD BE SOUGHT AND HOW.

For example, one may have a dispute with a railway company as to the loss of or damage to a valuable consignment *en route*, and it may be very desirable, in order properly to pursue the case, to inspect the company's documents in connection with it. It will be readily appreciated that to examine the “Invoice” for the consignment, the “Claims Form Report,” the “Guard's Report,” the “Checker's Report,” and the various other stereotyped forms, together with the subsequent correspondence between the goods agent at the forwarding end and the goods agent at the receiving end, will enable the claimant to satisfy himself as to whether he is proceeding along the right lines, or whether he will be better advised to follow some other line of action. Power to make such an examination is given in the Rules of Procedure of the Railway Rates Tribunal, Sections 26, 27, and 28 of which provide respectively as follows—

26. (1) Either party may, without filing any affidavit, by summons, apply for an order directing the other party to make discovery of the documents which are or have been in his possession or power relating to the matter in question. Such application may be included in the summons for directions, but in any other case shall be served on the other party not less than three days before the hearing thereon. The summons shall specify the character and description of the documents of which discovery is sought.

(2) The Court or Registrar may, on hearing such application, direct that a list of documents shall be delivered without requiring that the same shall be verified by oath, or may, either upon the original hearing of the application for discovery or subsequently, direct that discovery shall be made on oath. The Court or Registrar shall fix the time within which such list of documents or discovery is to be given.

(3) The Court or Registrar may, at any time during the pendency of

any cause, order the production by any party thereto of such of the documents in his possession or power relating to the matters in question as the Court or Registrar shall think fit.

27. Either party shall be entitled at any time before or at the hearing of the cause to give a notice in writing to the other party in whose application or answer or other pleading reference is made to any document, to produce it for the inspection of the party giving such notice, or of his solicitor, and to permit him to take copies thereof, and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such proceeding without the leave of the Court, unless he satisfy the Court that he has sufficient cause for not complying with such notice.

28. (1) Either party may give to the other a notice in writing to produce such documents as relate to any matters in difference (specifying the said documents), and are in the possession or control of such other party, and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice (*a*).

(2) Either party may give to the other party a notice in writing to admit any documents saving all just exceptions (*b*), and in case of neglect or refusal to admit after such notice, the cost of proving such documents shall be paid by the party so neglecting or refusing whatever the result of the application may be, unless at the hearing the Court certify that the refusal to admit was reasonable, and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

The Courts have definitely laid it down that where the onus of proof is on one particular party—as, for instance, where a trader is suing a railway company—and the other party, by virtue of his profession or occupation, is in the possession of information which alone can prove the justice or otherwise of the proceedings, the party, on proof, is entitled to such information. Thus, where goods have been lost in transit the carriers are the only people who can say what actually happened to the goods, and if they are required (by the proper means) to do so, they must say in what wagon the traffic was dispatched, where it was transhipped, where it was last seen, and what steps have been taken to trace the whereabouts of the consignment.

A peculiar yet interesting case in this connection—*Hunter v. Great Western Railway*—came before the Manchester County Court in October, 1913. In this case it was shown that the plaintiffs had made a number of claims against the defendant company who were unable to trace payment of a very large number of them, and it was necessary, therefore, for the plaintiffs to compel the

railway company to disclose their documents in respect of the claims, and to produce the receipts which they held for the sums paid. On production of their documents the railway proved that the claims had been duly met and the amounts paid in cash, although it transpired that the money had not been placed to the credit of the company by the individual who received payment on their behalf; and to the railway company's complaint of faulty book-keeping on the part of the claimants it was stated that had the amounts been paid by cheque, in accordance with the plaintiffs' request, the costly county court procedure could have been avoided.

It may be interposed that when there is perfect frankness and goodwill between the trader and the railway company, the latter will, in a case of dispute, produce their documents for the inspection of the claimant without any recourse to law; and frequently enough it transpires that by thus laying all one's cards on the table—so to speak—the matter can be disposed of to the satisfaction of both parties, and obviously this is much the wiser course to follow.

### THE RAILWAY AND CANAL COMMISSION RULES.

The Railway and Canal Commission have very similar rules and these provide as follows—

49. In England and Northern Ireland either party may, without filing any affidavit, apply to the Commissioners for an order to direct the other party to make discovery on oath of the documents which are or have been in his possession or power relating to the matter in question. In Scotland either party may apply to the *ex-officio* Commissioner for an order on the other party to produce all documents which are in his possession or power relating to the matter in question, or either party may apply as aforesaid for a diligence to recover all documents, in whose-soever possession they may be, relating to the matter in question. Provided that, in either case, the party making the application shall give to the other party at least three days' notice of his intention to make it, and shall (where a diligence is sought), with such notice, furnish a copy of the specification setting forth the documents for recovery of which a diligence is sought.

50. In England and Northern Ireland the applicant may, at any time after serving his application, and the defendant may, at or after the time of delivering his answer, by leave of the Commissioners, deliver interrogatories in writing for the examination of the opposite party.

Interrogatories shall be answered by affidavit to be filed within ten days or within such other time as the Commissioners may allow. The interrogatories may be answered partly by one person and partly by another or others, but in all cases the party answering any part thereof shall state in his answer that the matters stated by him are within

his personal knowledge, and if any person interrogated omits to answer or answers insufficiently, the party interrogating may apply to the Commissioners for an order requiring him to answer, or to answer further, as the case may be.

No payment into Court of a sum of money as deposit shall be required from a party seeking discovery by interrogatories or otherwise.

In Scotland either of the parties may at any time after the service of the application or lodging of the answer respectively, and before any proof has been adduced, present to the *ex-officio* Commissioner a statement of facts which he desires to be answered by his opponent, and may move the *ex-officio* Commissioner for an order on his opponent to answer the same, with which motion the *ex-officio* Commissioner shall deal as appears just. Notice of such motion (accompanied by a copy of the statement of facts) to be served at least three days before the motion is to be heard.

51. It shall be lawful for the Commissioners, at any time during the pendency of any matter before them, to order the production by any party thereto, upon oath, of such of the documents in his possession or power relating to any such matter as the Commissioners shall think right; and the Commissioners may deal with such documents, when produced before them, in such manner as shall appear just.

52. Either party shall be entitled at any time before or at the hearing of the case to give a notice in writing to the other party in whose application or answer or reply reference is made to any document, to produce it for the inspection of the party giving such notice, or of his solicitor, and to permit him to take copies thereof, and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such proceeding without the leave of the Commissioners, unless he satisfy the Commissioners that he had sufficient cause for not complying with such notice.

53. Either party may give to the other a notice in writing to produce such documents as relate to any matters in difference (specifying the said documents), and which are in the possession or control of such other party, and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.

54. Either party may give to the other party a notice in writing to admit any documents saving all just exceptions, and in case of neglect or refusal to admit, after such notice, the costs of proving such documents shall be paid by the party so neglecting or refusing, whatever the result of the application may be, unless at the hearing the Commissioners certify that the refusal to admit was reasonable, and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

The foregoing rules, as will be seen, are very useful in those cases where there is a dispute as to rates, rebates, undue preference, and so on, as they enable the trader or firm to view the documents in the possession of the railway company which have a direct and



very important bearing on the subject of the action. For example, a firm may be claiming a rebate allowance from a railway company for unperformed services at a private siding, and the railway company may argue that the firm is not entitled to any such allowance because when their predecessors negotiated with the company for the establishment of the siding it was mutually agreed between them that the firm should pay station rates for all traffic passing into and out of the siding; and in such an event the successors of the people who had the siding laid in—that is, the present owners of the siding—may desire to see all the original correspondence in connection with the matter. In an instance of this kind, if the railway company were disinclined to produce the correspondence, there would be no alternative but for the firm to apply to the Railway Commissioners for an order compelling the railway company to produce the correspondence, and such application would have to be made under the rules quoted above.

Sometimes an attempt is made under the foregoing rules to institute a “fishing” inquiry, but these are invariably disallowed. Thus, in the case of *John Weston, Ltd. v. Caledonian Railway Co.* (3 B. & W. 451), and others, the defendants claimed to be entitled to call for the following—

1. All books, accounts, abstracts, statements, reports, returns, and other documents or writings made or kept by or on behalf of the applicants or their predecessors in business from 1871, that excerpts may be taken therefrom for each of the years 1871 to 1900, both inclusive, of all entries showing or tending to show—

- (a) Quantities of coal, etc., sold from each pit, and the prices (pit and otherwise) charged for such minerals.

- (b) Quantities and prices of minerals forwarded by railway, etc.

- (c) Quantities and prices dispatched to the stations mentioned in the application as distinguished from the remainder.

- (d) Quantities and prices dispatched for shipment, etc.

2. All books, etc., showing the total cost of working and carrying on the business of coalmasters.

3. All books and entries showing the gross and net profits or losses of the applicants accruing from their business as coalmasters, and the appropriation of such profits.

4. All books, etc., showing the amount and objects of or relative to the capital expenditure of the applicants.

5. All plans, sketches, drawings, estimates, specifications, showing the sidings, etc., on the collieries from 1871 to 1900, the alterations made from time to time, and the additions, improvements, or alterations to or upon screening, washing, or cleaning coal, and small coal or dross at or in connection with each of said collieries.

6. All books, etc., showing the cost of construction and maintenance of such sidings, etc.

7. All books, etc., showing the number and earnings of the applicants' wagons.

The Court disallowed the application, and in doing so Lord Stormouth-Darling said: "What the specification really does is to propose a searching examination, extending over thirty years, into every detail of the business carried on by the Lothian Coal Co. and their predecessors—their output, their prices, their cost of working, their capital expenditure, their profits or losses, and many other things. If such a process were applied to each of the applicants in this congeries of cases, I do not know when the inquiry would end. Even if relevant, such a call would be objectionable, as being altogether out of proportion to the question in dispute. But it seems to me to be wholly irrelevant, and I therefore disallow the entire specification."

In the *General Electric Co., Ltd. v. Great Western Railway* (XV., R. & C.T.C. 53), which came before the Commissioners in December, 1911, a similar result was arrived at. Here upon a complaint that the defendant railway company were unduly preferring certain trade competitors of the applicants by carrying their goods at lower rates than those charged to the applicants, an order was made by the Registrar that the applicants should be precluded at the hearing from giving evidence of specific consignments by themselves and their said competitors unless six weeks before the hearing they delivered to the defendants particulars identifying such specific consignments. Before any such particulars were delivered, a second order was made by the Registrar that the railway company should file an affidavit, stating what documents were or had been in their possession as from a certain date relating to the consignment of the said competitors' traffic to certain places mentioned in the application. It was held by the Court of Appeal (Cozens-Hardy, M.R., Fletcher Moulton, and Buckley, L.JJ.), confirming the decision of the Railway Commissioners, discharging the last-mentioned order of the Registrar, that the application for discovery by the applicants was premature, and that they first ought to make their case by alleging specific instances in respect of which they claimed relief, in support of which they then could have discovery.

In dismissing the application, Cozens-Hardy, M.R., said: "The

applicants have a shrewd suspicion that one or more of the railway companies conveying goods from Hockley Station to some twenty or thirty stations over England are guilty of showing an undue preference in favour of their rivals in trade. They say that they really cannot tell whether the Great Western Railway Co. is the culprit in respect of goods which may go from Hockley to, say, Bedford, which I think was the instance given, but either the Great Western or some one of the other companies did it, either with reference to Bedford or with reference to some other station in England, and they make the application, and launch the proceedings in that perfectly general form.

“An order was made for particulars on the 17th October. It was ordered ‘that the applicants be precluded at the hearing (except by leave of the Court) from giving evidence of specific consignments by the applicants and Belliss & Morcom, Ltd., respectively, from Hockley Station to the stations in the first schedule of the re-amended application’—they are the stations which I have said are twenty or thirty in number—‘unless six weeks before the hearing the applicants deliver to the defendants particulars identifying such specific consignments.’ That having been done in October, they seek to obtain and they get from the Registrar an order ‘that the defendants do within ten days by their proper officer file an affidavit stating what documents are or have been in their possession from the 27th June, 1907’—that is for three years—‘relating to the consignment of the competitors’ traffic to the places mentioned in Schedule I of the re-amended application.’

“Now that seems to me to be one of the most oppressive orders that was ever either asked for or granted. I can see no justification for it. It is a ‘fishing’ application, if ever there was an application which deserved that epithet.”

No legitimate application, however, is ever refused, for as Buckley, L.J., said in his judgment in the last-mentioned case: “Make your case by alleging specific instances in respect of which you claim relief, and you shall have discovery in support of it.”

## CHAPTER XII

### DAMAGES RECOVERABLE

THE following rule for the assessment of damages was laid down in the case of *Hadley v. Baxendale* (23 L.J., Ex. 179) and may be taken as a general guide in this matter—

“When two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it.

“Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such contract which they would reasonably contemplate would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated. But, on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances for such a breach of contract. For, had the special circumstances been known, the parties might have specially provided for the breach of contract by special terms as to the damages in that case, and of this advantage it would be very unjust to deprive them.”

### DAMAGES RECOVERABLE FOR DELAY IN TRANSIT.

In the case of *O'Hanlan v. Great Western Railway Co.* (34 L.J., Q.B. 154) it was laid down that the damages recoverable in an action at law are the market value of the goods at the time and place at which they were, or should have been in the ordinary course of events, delivered. If there is no market for the goods

at the place of delivery, then the damages may be ascertained by taking the price of the articles at the point of dispatch, and adding thereto the cost of conveyance and the profit which the consignee would have made. Thus, in *Collard v. South Eastern Railway Co.* (30 L.J., Ex. 393), the plaintiff sent a large quantity of hops in bags from a station in Kent to London. There was an unreasonable delay in the delivery of the hops, and meanwhile the price on the Hop Exchange went down very much. Consequently the consignor lost £65 on the parcel, and he sued the company for this amount. The defendant company contended that the loss was not the natural consequence of its negligence, as it had no notice that the hops were intended for sale; but the Court held that the company was liable, as it must have known that the hops were probably for sale, and the loss was a direct, natural, and necessary consequence of the negligence.

Again, in *Keddie, Gordon & Co. v. North British Railway Co.* (14 Sess. Cas. 4th, Ser. 233), a cloth manufacturer forwarded a bale of cloth by the defendants to a shipping agent at Grimsby, who was to ship it to Germany. On arrival at Grimsby the package was found to be frayed, and some slight damage done to the cloth. The shipping agent refused to take delivery, being of opinion that the goods could not be safely forwarded in their damaged package. The railway company thereupon returned them to the manufacturer, who re-packed them and forwarded them to Germany. On arrival there they were rejected as being too late. The manufacturer having sued the railway company for damages for loss of market, it was held by the Court of Session that the loss of market was the direct result of the damage done to the package by the railway company, which was, therefore, liable for it.

In *Hales v. London and North Western Railway Co.* (2 L.J., Q.B. 292) Chief Justice Cockburn said: "If it were necessary to lay down any rule as to what should be the law in such cases, where no time is mentioned as to the carrying, the obligation of the carrier is to convey within a reasonable period; but the party who sends it is not entitled to call upon the carrier to go out of his ordinary, accustomed course, or to have recourse to extraordinary means of despatch for the conveyance of goods; but he is entitled to expect that the carrier will do, not that which is unusual, but



that which is within his means and power for the purpose of transmitting the goods." But, in *Simpson v. London and North Western Railway Co.* (1 Q.B.D. 274; 45 L.J., Q.B. 182), the same judge decided that: "Whenever either the object of the sender is specially brought to the notice of the carrier, or circumstances are known to the carrier from which the object ought in reason to be inferred, so that the object may be taken to have been within the contemplation of both parties, damages may be recovered for the natural consequences of the failure of that object." Hence, in *Redmayne v. Great Western Railway Co.* (L.R. 1, C.P. 329), where the plaintiff sent goods from Manchester by the defendants' railway to his traveller at Cardiff, the delivery of the goods was, through the negligence of the defendants, delayed until after the traveller had left Cardiff, and the plaintiff, in consequence, lost the profits which he would have derived from a sale at Cardiff; it was held that, in the absence of notice to the defendants of the object for which the goods were sent, the plaintiff could not recover from them such profits as damages for the delay.

The deduction from the foregoing is that the sender should—in the case of urgent consignments—notify the carriers that a quick transit is essential, and, if the consignment is lost or damaged beyond use, and has to be replaced, submit a claim for the value of the goods plus the cost of conveyance and such other losses as are the direct outcome of the breach of the contract on the part of the railway company. In the case of *Collard v. South Eastern Railway Co.*, to which reference is made above, Martin, B., said: "It was proved that if they had been brought to market on the proper day they would have fetched a certain price, but, not being brought until a later day, the market price in the meantime fell, and the value of the hops was diminished by the amount of £65. If that be not a direct, immediate, and necessary consequence of the defendants' breach of duty, it is difficult to understand what would be." And in *Wilson v. Lancashire and Yorkshire Railway Co.* (30 L.J., C.P. 232) Willes, J., said: "The damage in respect of the goods being depreciated in value in consequence of their arrival at a time when they were in less demand, and less capable of being applied usefully by the plaintiff is the ordinary, natural, and immediate consequence of the delay, for which the carrier is answerable."

A very important case, *Thomas Boag & Co., Ltd. v. Cheshire Lines Committee*, involving the question of the liability of a railway company for delay to goods in transit, came before the Court of Appeal on 21st July, 1920, and, owing to the decision arrived at may here be referred to at some length. This was a claim for £39 1s. 3d., the value of a bale containing 1,000 old bags which had been consigned by the defendants' railways. The plaintiffs, who carry on business at Greenock, had a stock of old bags in warehouse at Liverpool, and they instructed Messrs. Roberts, Brining & Co., forwarding and shipping agents, Liverpool, to forward to Messrs. Lockwood, Blagden & Crawshaw, Ltd., at Warmsworth, near Doncaster, one bale. The goods were handed to the defendants on the 18th October, 1918, but owing to the label becoming detached on the journey, they could not be delivered and were sent to the Lost Property Depot at Manchester, to await identification. This did not take place until March, 1919, and in the meantime the plaintiffs had sent the consignees another bale to replace the lost one, and had instructed them not to accept the first bale if it was subsequently tendered. Consequently, when the consignees were informed the goods had been found, they declined to accept them, and they were returned to Liverpool and offered to the plaintiffs' agent, but the plaintiffs refused to take them back unless the defendants admitted their claim for the value.

The goods were consigned on one of Messrs. Roberts, Brining & Co.'s own forms of consignment note, which was as follows—

Please receive in good order and condition from Roberts, Brining & Co. for shipment per Great Central Railway for Messrs. Lockwood, Blagden & Crawshaw, Ltd., Sidings, Warmsworth, 1 bale old bags, Carriage forward.

and did not contain any reference to the usual conditions of carriage of the railway companies.

A copy of the letter which was issued by the railway companies to firms using their own forms of consignment note was sent to Messrs. Roberts, Brining & Co., on the 6th May, 1918, and their representative admitted in the witness box that they had received it and were familiar with the railway companies' standard conditions of carriage. The plaintiffs' managing director also admitted that they had received a similar letter from the Scottish companies,

but stated that he had instructed his people not to sign the suggested agreement, but neither he nor the representative of Roberts, Brining & Co. stated that they had ever told the railway companies that they declined to be bound by the railway companies' conditions.

The letter contains the following paragraph—

Should you desire to continue to use your own forms of Consignment Notes, I have to give notice that unless they are endorsed as shown above or a General Agreement in the terms indicated is completed, the Railway Companies will only accept consignments for conveyance under the standard conditions as set forth on their Consignment Notes.

When the goods were handed to the railway company nothing was said on either side as to the terms on which they were to be carried; the carter simply handed the goods in with the private consignment note in the usual way, and at the hearing the defendants contended that from the date of the letter of the 6th May, 1918, they ceased to be common carriers, and were therefore at liberty to stipulate the terms upon which they would carry goods, and having done so by that letter, the plaintiffs were bound by its terms if they sent any goods by railway after its receipt, and that therefore the goods were carried subject to the railway companies' standard general conditions, and as the terms of paragraph 3 had not been complied with they were not liable for the claim.

The following judgments were delivered—

Lord Justice Bankes: "This is a case which was tried in the Court of Passage, and the claim was really for failing to deliver a quantity of bags that had been delivered by the plaintiffs' agent to the defendant railway company for carriage from Liverpool to some place in the neighbourhood of Doncaster, and they were delivered to the railway company in October, 1918, at a time when there was a congestion upon the railways, and this bale went astray; it was not apparently discovered until the following March, and then it was tendered to the plaintiffs, and they refused to accept delivery of it, and ultimately an action was commenced in which the plaintiffs claimed the value of the entire bale which amounted to something like £39, but their cause was really for breach of duty as carrier. The railway company in answer to that claim alleged that they were not common carriers of this bale, but that they were carrying under a special contract. The learned

judge of the Court of Passage decided that the defendants had failed to establish the existence of any special contract, and he held also that if there was any special contract it was not one which complied with the section of the Railway and Canal Traffic Act, which required any special contract relied upon by the railway company to be signed by or on behalf of the person delivering the goods. We have had some discussion as to whether or not a special contract was in fact made. It does not seem to me necessary to express any opinion upon that, because I think the other point is clear beyond any question. The railway company contended that it was sufficient for them to rely upon the consignment note which the plaintiffs' agent had handed to the railway company. That was the consignment note which bore the plaintiffs' name in print, and Mr. Eustace Hills desires to contend that that fact was a sufficient signature. It may be that it was a sufficient signature, but the difficulty in his way, which it is quite impossible for him to get over, as it seems to me, is that assuming that document to be sufficiently signed, not only did it not contain the special condition, but it did not contain any reference to the special condition under which the railway company sought to be relieved of any liability, namely, Condition 3 in this consignment note which required any claim to be sent in within fourteen days after dispatch of the goods. I think it is not only plain from the language of the section itself, but abundantly plain from the decision of the House of Lords to which Lord Justice Scrutton has called attention, *Peek v. North Staffordshire Co.*, that in order to satisfy the requirements of the statute the document which is signed by the person consigning the goods, and which the railway company are relying on as constituting the special contract, must contain, either on its face, or by reference, the special condition upon which the company are relying. In my opinion in this case the company have failed to show any such special contract, and under these circumstances I think the learned judge's decision was quite right and the appeal fails."

Lord Justice Scrutton: "The railway company, having two bales of old bags consigned to them for carriage, contrived to lose one for six months, and apparently to lose the other for some considerable time. An action was accordingly brought against them for the whole value of one of the bales. The railway company



endeavoured to rely on a special contract that they should not be liable for damages for loss of market from delay. To do that they had to get first of all a contract; secondly, a contract in writing signed by the consignee. The learned judge below found that there was no contract. I am not expressing any opinion on that part of the case; it is not necessary to do so in view of the finding on the next part of the case. The railway company said that it was a contract in writing signed by the consignee because they had an order from the consignee 'Please receive in good order and condition from Roberts, Brining & Co.,' and the order was given after the consignee had had notice that the railway company would only receive on particular conditions. Mr. Eustace Hills was prepared to argue, and indeed he got some way in arguing on abstract principles, that that was a contract signed by the consignee. It seems to me quite clear as far as this Court is concerned that the matter is decided by the decision of the House of Lords in *Peek v. North Staffordshire Railway Co.* I am not expressing any opinion whether this particular form of note is signed by the consignee. Our attention has not been called to cases on the subject, and I do not express any opinion whatever upon the matter, but in *Peek v. North Staffordshire Railway Co.* (see page 188), one of the questions, the second question, submitted to the judges, and the question dealt with in all the judgments of the Courts, was whether the note in that case was a contract in writing signed by the consignees, the particular note being in this form. Although the railway company had in previous correspondence called attention to a condition that they would not be liable unless the goods were insured, the consignee wrote on the delivery note 'not insured.' It was said that those words 'not insured' brought in the previous correspondence and the condition therein mentioned about the non-liability unless the goods were insured. All the judges expressed their opinion on the point, and the Lord Chancellor, giving the judgment of the majority of the House, said: 'In order to embody in the letter any other document of memorandum or instrument in writing, so as to make it part of a special contract contained in that letter, the letter must either set out the writing referred to or so clearly and definitely refer to the writing that by force of the reference the writing itself becomes part of the instrument it refers to. In the light of that



direction, looking at this consignment note, it neither sets out the condition referred to, nor does it clearly or definitely or at all refer to the conditions which the railway company seek to incorporate. In these circumstances the case had been clearly decided against the contention of the railway company by the decision of the House of Lords, and on that ground their defence to the action fails. They have very sensibly agreed the amount of damages, relieving us from laying down any general principle or damages for non-delivery in the case of land carriage."

Lord Justice Atkin: "I agree, and I have nothing to add."

The appeal was dismissed with costs.

### —FOR DAMAGE.

If the goods are only partially destroyed, the amount recoverable is the difference between the value of them if they had been delivered in good condition at their proper destination, and their value in such a damaged or deteriorated condition at that place or the place where they are otherwise delivered. In the case of *Dick v. East Coast Railway Co.* (4 *Fraser* 178) where a machine worth £100 was damaged while in transit on the railway, and evidence was given to show that the damaged parts could be repaired at a cost of from £16 to £30, although it was uncertain whether the machine would then work properly, the defendant railway company was held liable to pay the consignee the full value of such machine.

But as was pointed out on the first page of the first chapter of this book, the liability of a railway company for any damage during transit is largely governed by the mode of packing, and as the position and liability of a railway company in this respect was so very clearly stated in the case of *Gould v. South-Eastern and Chatham Railway Co.*—which came before the Court of Appeal on 17th March, 1920—it is justifiable to quote this case very fully here. Shortly stated the facts are these. In September, 1919, the plaintiff, who was then carrying on business at Ramsgate, desired to remove to London, and wrote to the defendants requesting them to send and collect his goods for carriage on their railway. The defendants sent a carman named Perry with a van, and on his arrival at the plaintiff's premises the plaintiff asked him for a form of consignment note. Perry had not one with him, but said that he could make a consignment note on anything. The plaintiff

then made out on a postcard a list of the goods, which consisted of seven packages, including a glass showcase, wrote on it his name with the address to which the goods were to be sent, together with the words "Carriage forward," and handed it to Perry. Perry pointed out to him that the showcase was improperly packed, and told him that being glass it would probably have to be paid for at a higher rate than the other goods. Thereupon the plaintiff asked Perry "to do his best" for him, which Perry understood to mean that the plaintiff wished him to fill up and sign for him the form of consignment note which was applicable. Perry took the goods away in the van, and on arriving at the railway station filled up a printed form of consignment note with the list of goods to be carried and signed it with the plaintiff's name. The form bore the heading "Consignment note for damageable goods when not properly protected by packing at owner's risk," which is the only form that the company have applicable to that class of goods. During the transit to London the showcase was damaged, and for that damage the present action was brought.

The defendants contended that the consignment note was binding on the plaintiff as being a special contract signed by the owner within Section 7 of the Railway and Canal Traffic Act, 1854; and, secondly, that even if the goods were carried by them as common carriers and not at owner's risk they were not responsible for the damage which was occasioned by the plaintiff's neglect to pack the goods properly.

The County Court judge held (1) that there was not sufficient evidence of Perry's authority to sign an "owner's risk" note on the plaintiff's behalf and that consequently the goods must be treated as having been carried by the defendants as common carriers. And (2) that even if the showcase was damaged as the result of improper packing it was a good answer that the defendants knew of the insufficiency at the time they received the goods for carriage; and for that he relied on a ruling of Lord Ellenborough in *Stuart v. Crawley* (1818, 2 *Stakr.* 323). He therefore gave judgment for the plaintiff.

The defendants appealed.

Atkin, L.J., in delivering judgment, said: "This is an appeal from the judge of the Southwark County Court, who gave judgment for the plaintiff in an action brought against a railway company

for damage done to a showcase while in transit on their railway from Ramsgate to London. The first defence of the railway company is that the case was carried at owner's risk upon a special contract made in pursuance of Section 7 of the Railway and Canal Traffic Act, 1854. That contract was contained in a consignment note which purported to be signed by the plaintiff. His signature, however, was in fact affixed by the vanman Perry, who was in the employment of the defendants, and the question is whether Perry had the authority of the plaintiff to sign on his behalf. That depends upon the proper conclusion to be drawn from the facts. (His Lordship stated the facts as set out above and continued.) The plaintiff was unable to decide on what terms the goods should be carried; he knew there might be some objection to their being carried at all, or certainly to their being carried at the company's risk, and he left it to Perry to do the best he could for him. It seems to me clear that the authority he gave to Perry was expressed in such ambiguous terms that Perry might reasonably suppose he had authority to sign a consignment note on the terms of 'owner's risk,' and under those circumstances the plaintiff cannot be heard to say that he had not given Perry the authority which Perry thought he had received. If there is any necessity for an authority for that proposition I may refer to *Ireland v. Livingston* (27 *L.T.Rep.* 79; *L.Rep.* 5 *H.L.* 359). It seems to me that the only way in which Perry could 'do his best' for the plaintiff in order to get the goods conveyed at all was to consign them on an owner's risk note. The idea that a railway company would be willing to carry imperfectly packed goods at company's risk is inconceivable, and I am driven to the conclusion that Perry in fact received the plaintiff's authority to procure the goods to be carried at owner's risk.

"That is enough to dispose of the case. But assuming that I am wrong in holding that Perry had authority to make the special contract on the plaintiff's behalf, there remains for consideration the other point discussed—namely, whether the defendants, assuming that they carried the showcase on the terms of the liability of common carriers, are precluded from setting up as a defence that the damage was due to improper packing, on the ground that they carried it with full knowledge of its condition. The learned judge in the County Court held, that as the carriers knew

of the condition of the packing at the time they received the article, they could not disclaim their liability as insurers. That gives rise to an important and interesting question of law. The rule as to the duty of a common carrier is thus stated in Story on Bailments, Section 492(a): 'Although the rule is thus laid down in general terms at the common law, that the carrier is responsible for all losses not occasioned by the act of God, or of the King's enemies, yet it is to be understood in all cases that the rule does not cover any losses, not within the exception, which arise from the ordinary wear and tear and chafing of the goods in the course of their transportation, or from their ordinary loss, deterioration in quantity or quality in the course of the voyage, or from their inherent natural infirmity and tendency to damage, or which arise from the personal neglect, or wrong, or misconduct of the owner or shipper thereof.' Thus, for example, the carrier is not liable for any loss or damage from the ordinary decay or deterioration of oranges or other fruits in the course of the voyage, from their inherent infirmity or nature, or from the ordinary diminution or evaporation of liquids, or the ordinary leakage from the casks in which the liquors are put, in the course of the voyage, or from the spontaneous combustion of goods, or from their tendency to effervescence or acidity, or from their not being properly put up and packed by the owner or shipper; for the carrier's implied obligations do not extend to such cases.' That passage is cited by Willes, J., in *Blower v. Great Western Railway Co.* (26 L.T.Rep. 883; L.Rep. 7 C.P. 655) as an accurate statement of the law, and thus is a sufficient authority for me to act upon without more. Does it make any difference that the faulty packing which caused the damage was manifest to the carrier at the time the goods were delivered to him to be carried? By analogy to the exception of inherent vice it would seem that it does not. The inherent vice or natural tendency of certain kinds of goods to depreciate or become damaged may be perfectly apparent to the carrier, and in most cases would be quite manifest when he received the goods, nevertheless he is not responsible for the damage resulting from such cause, and it appears to me that there is no reason for treating the exception of damage caused by defective packing in any different way. But this case is not without authority, because in *Barbour v. South-Eastern Railway Co.* (34 L.T. 67, at 68) a



similar question arose. There the plaintiff wished to send furniture by the defendants' railway. He made inquiries of the defendants for rates, and they when quoting their rates informed the plaintiff that one of the conditions of the carriage was that they were not to be responsible for damage if the goods were not properly packed. The goods, which had been lying at a depository, were eventually carried by the defendants' railway, and owing to insufficient packing were damaged. The facts are thus stated in the judgment of Cleasby, B.: 'At the depository where this furniture was there were haybands and matting at hand which might have been used for the purpose of protecting it, but the plaintiff deliberately chose not to make it safe. The carman could not use the haybands, because had he done so he would have been acting in violation of the company's regulations. The plaintiff, therefore, voluntarily left them in the condition they were in, and by doing so took upon himself the risk of anything happening to them. The real question is, Whose duty was it to pack? No doubt it was the plaintiff's duty to pack. What caused the damage? Why, it was occasioned by the furniture not being properly packed. No person is entitled to claim compensation from others for damage occasioned by his neglect to do something which it was his duty to do.' Further on he says: 'But here the goods were delivered in a manifestly unsafe condition, and, as I have said before, the plaintiff chose to have them go in the condition they were in, and the damage was the consequence. I think, therefore, he is not entitled, under the circumstances, to recover.' And Field, J., says the same thing: 'I also think the County Court judge was quite right in the conclusion he arrived at in this case, that the damage complained of was caused by improper packing.' That is a case where goods were handed to common carriers, they were manifestly in an unsafe condition, the damage arose from their being in that condition, and it was held that the plaintiff could not recover. The facts in the present case are precisely the same, and the same results must follow. The only doubt that has been thrown upon this proposition arises from the case of *Stuart v. Crawley* (2 Stark. 323, 324). There the plaintiff's servant took a valuable greyhound with a string round his neck to the warehouse of the defendant, a carrier, to be carried from London to Harefield Lock. The defendant's book-keeper, to whom the dog was



delivered, gave a receipt for it. The dog was tied by the string in a watch-box, but shortly after slipped from the noose and was not afterwards heard of. Lord Ellenborough held that the defendant was responsible. He said: 'The case was not like that of a delivery of goods imperfectly packed, since there the defect was not visible, but in this case the defendant had the means of seeing that the dog was insufficiently secured. . . . After a complete delivery to the defendant, he became responsible for the security of the dog, the property then remained at the risk of the defendant, and he was bound to lock him up, or to take other proper means to secure him. The owner had nothing more to do than to see that he was properly delivered, and it was then incumbent on the defendant to provide for its security.' It seems to me that that case is sufficiently supported by the consideration that even if goods are delivered to a carrier imperfectly packed, the carrier is nevertheless under an obligation to take reasonable care of them in that state, and the judge there was of opinion that the defendant in only availing himself of the meagre means of confining the dog provided by the plaintiff was not discharging his duty of taking proper care of it, and was, therefore, liable. That case is, I think, no authority for the proposition that, where goods are handed to a common carrier imperfectly packed, the carrier accepts full responsibility if he knows that this is the case. If it is an authority for that it seems to me inconsistent with *Barbour v. South-Eastern Railway Co.* (*sup.*), and I doubt much whether Lord Ellenborough meant to lay down any such proposition of law. In my view the defendant's knowledge of the improper packing in the present case did not make them responsible, and the plaintiff, even if he is right in his first contention, still cannot recover. The appeal must be allowed, and judgment entered for the defendants."

Younger, L.J.: "I am of the same opinion on both points. When one bears in mind the conversation that took place between the plaintiff and Perry as regards the absence of a consignment note, it seems quite plain that the plaintiff authorized Perry to make out a proper consignment note on his behalf with respect to these goods, and I further think that the inference is irresistible that the consignment note so authorized was, as Perry himself inferred, to be a note at owner's risk. I should myself have thought

so even if the goods had been consigned to some person other than the plaintiff. But in the present case they were consigned to the plaintiff himself, carriage forward ; they were received by him, and he paid for them without objection at owner's risk rate. It seems to me that the plaintiff authorized Perry at the beginning of the transaction to consign the goods for him at owner's risk, and also that at the end of the transaction he ratified Perry's action by accepting the terms on which they had, in fact been carried.

" With regard to the second point, while accepting with deference what my lord has said on the question of law arising on this branch of the case, I will pass it by for the moment to point out that the plaintiff's contention is not supported by the facts. I will assume that Mr. Bickmore's contention is right, that a railway company are not absolved from responsibility for the safe carriage of goods imperfectly packed if at the time they received the goods the fact of the improper packing was brought to their notice by the consignor. But that contention is entirely displaced by what took place between Perry and the plaintiff. When the goods were tendered to Perry it was not the plaintiff who pointed out to Perry that they were improperly packed, but Perry who pointed out that fact to the plaintiff ; the proper inference from which is that the plaintiff in substance said to Perry : ' Whether they are well packed or badly packed, take them as they are.' And, if that is the effect of what took place between them, the railway company are, to my mind, in exactly the same position as if they had had no notice of the improper packing. I agree that the appeal must be allowed."

Appeal allowed.

The case of *Smith v. Buskell* ; *Buskell v. Smith and Great Western Railway* (121 *L.T.* 301) may also, with profit, be quoted here. In this case a buyer of certain perishable goods alleged that in breach of his contract the seller had failed to pack the goods well or securely or in such a condition as to enable them to withstand the ordinary risks attaching to a journey on rail. As a consequence the buyer had suffered, as he alleged, considerable loss and damage, and thus he had a counterclaim against the seller in excess of the amount claimed by him in an original action against the buyer to recover the price of the goods sold and delivered.

The buyer further alleged that he had likewise a counterclaim for damages against the railway company because they in breach of their duty as carriers of the goods failed to take any proper steps to prevent them from being exposed to the weather, but dispatched the same in open trucks, and allowed the same to stand in water during the course of their transit. The buyer, therefore, joined the railway company as defendants to the counterclaim.

An order was made on the 8th May, 1919, by Master Bonner on the application of the seller that the buyer's counterclaim in so far as it joined the railway company as defendants to the counterclaim be struck out.

On appeal from that order by the buyer it was ordered by Roche, J., sitting in chambers, that the order be rescinded and that the costs of the appeal and the application to Master Bonner be costs of the buyer in the counterclaim. From that decision the seller, by leave, appealed.

In giving judgment, Warrington, L.J., said : " This is an appeal from an order of Roche, J., refusing to strike out the defendant's counterclaim in so far as it is a claim against the Great Western Railway Co.

" The plaintiff's action is for the price of goods sold and delivered, the contract being one to deliver the goods f.o.r. at Paddington. The defence is, first, that the plaintiff failed to deliver the goods in good condition and, therefore, did not fulfil his contract ; and, secondly, that if he did deliver them in good condition he committed a breach of an implied term of his contract so to pack the goods that they should be reasonably fit to withstand the ordinary risks of transit by rail.

" That is the defence, and the defendant also raises that point against the plaintiff by way of counterclaim, making a claim for damages. To that counterclaim he has added the Great Western Railway as defendants, the allegation against the railway company being that the goods having been delivered to them at Paddington Station in good condition, they, in breach of their duty as carriers, so treated the goods that when the same arrived at their destination they were in bad condition.

" There is a further claim in the counterclaim covering really both grounds, because if the plaintiff had not failed properly to pack the goods the damage would not have arisen ; for if the

goods had been either packed in water-tight packages, or the packages in which they were packed, whether water-tight or not, had been placed by the railway company in a water-tight conveyance, the goods would have escaped injury.

“The first question that we have to determine and, in fact, the only question, is whether the relief here claimed against the railway company is so connected with the original subject of the cause or matter that it may properly be raised by counterclaim. It was admitted by Mr. Jowitt that if the two claims were really and strictly alternative—that is to say, if the defendant could only succeed against the railway company if he failed to prove his case against the plaintiff, or on the other hand, could only succeed against the plaintiff by proving that which would exonerate the railway company—then the counterclaim against the railway company would be one which could not properly be raised; and with that I agree. I think that such a case would come exactly within the decision in *Times Cold Storage Co., Ltd. v. Lowther and Blankley*.

“But he urged that that is not so here, because there is one aspect of the case in which the two subjects—namely, the relief against the railway company and the relief against the plaintiff—overlapped, and that was with regard to the packing. It may be that the packing was so defective that the damage may have been caused thereby. It may also appear that although the packing was defective yet if the railway company had taken ordinary precautions the damage would not have been occasioned.

“It seems to me, however, that it is impossible for us to say—that there may not arise circumstances, when the evidence comes to be gone into at the trial, which may show that the defendant is entitled to some relief arising out of the same state of facts against both these defendants to the counterclaim—the original plaintiff and the railway company. And I will even go so far as to say that circumstances may arise which will render it necessary for the Court in some way to apportion the damages as between these two defendants. If that is so then I think that there is a sufficient connection shown between the relief claimed against the railway company and the original subject of the cause or matter to enable the claim against the railway company to be joined with that against the original plaintiff.



"It seems to me, therefore, that the order made by Roche, J., was correct, and that the appeal ought to be dismissed with costs."

This action served this very useful purpose: it showed that the trader who buys goods on f.o.r. terms can hold the railway company responsible *as his agents* for seeing that the consignment, when handed to them for conveyance, is well and securely packed and that if anything goes amiss *en route* they can be called to account—a fact which had not previously been clearly established.

### RAILWAY COMPANY NOT LIABLE FOR "CONSEQUENTIAL" LOSSES.

As a rule, damages for "consequential" losses are not allowed, but in Oct., 1913, the Great Central Railway Co. was sued by George Henry Holden, Cotton Merchant, of Corporation Street, Manchester, for £12 18s. 4d., as damages for loss of three bags of cotton consigned to him, carriage forward, on 5th Aug., 1911, by Walter W. Crossland, of the Arundel Street Mill, Glossop, and was allowed such damages.

The solicitor for the plaintiff said that, although the cotton was consigned on 5th Aug., the defendant railway company only sent the plaintiff an advice note on 11th Aug. It had taken six days, apparently, to carry the cotton about twenty miles, to Manchester. Within 24 hours the plaintiff went to see the cotton, which had been forwarded in six bags. Three were all right. Instead of the other three, all that was shown to him was a heap of rubbish. There were no bags, and the stuff lying in a heap was not the cotton he had purchased or the cotton forwarded by Mr. Crossland through the company.

Confirmative evidence was given by the plaintiff and Mr. Wright Crossland.

The defence was that the stuff tendered was that sent by Mr. Crossland. The company's solicitor submitted, in any event, that a purchaser of goods was entitled, as from a railway company, only to the price he himself had paid for them, which in this case was £5 2s. 2d., and not to damages for loss of profit.

After hearing several witnesses for the company, the Judge held that damage had been proved, and gave judgment for the plaintiff for £10 and costs.—(*Railway and Shipping Journal*, Oct., 1913.)

As to "consequential" losses, see also the case of *David Roberts & Sons v. London and North-Western Railway*, reported on page 174.



**FOR LOSS—ON COMPANY'S RISK TRAFFIC.**

Section 7 of the Railway and Canal Traffic Act, 1854, provides as follows: "Every such company as aforesaid shall be liable for the loss of or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants . . .," and when goods are consigned and carried at the company's risk compensation can usually be recovered from a railway company—*provided, of course, the claim be made within the period allowed by the company for the reception of claims* (as to which see page 143) and evidence is adduced in support of the company's liability.

If that condition be *not* complied with the railway company will probably decline all liability, notwithstanding the fact that the goods were carried at the company's risk. A typical instance of this is the case of *O'Keefe and Others v. Great Western Railway Co.*, referred to on page 145. Here is another: At Ruthin, on the 17th November, 1920, before Judge Bryn Roberts, Messrs. David Roberts & Sons sued the London and North-Western Railway Co. for the recovery of £19 14s., in respect of certain goods entrusted to the company's care and lost in transit.

According to counsel for the plaintiffs a quantity of goods had been sent to Gloucester on 15th October, 1919, the plaintiffs paying carriage at company's risk. About the end of the year, notification was received from Gloucester that the goods had not arrived, and on the 14th January, 1920, the plaintiffs informed the company of this.

Counsel for the company admitted the receipt of the goods by the company, and also that delivery had not been made. His defence was that he relied upon the company's regulations and conditions on the consignment note signed on behalf of the plaintiffs, viz., "That the company shall not be liable for the non-delivery of consignments unless a claim be made, in writing, within fourteen days from the receipt of the goods by them, and shall also not be liable for indirect or consequential damages."

After a long legal argument, the judge found for the defendants with costs against the plaintiffs.

A rather unusual case—*Rowlands v. London and North-Western Railway*—came before the King's Bench Division in June, 1920,

and may be referred to here. In this case the plaintiff handed goods to the defendants for carriage to Canada Dock, Liverpool, there to be delivered to himself. The goods were carried to Liverpool, and when they reached the dock they were by mistake handed over to one Rowlandson. When it was found that the goods were not forthcoming the plaintiff informed the defendants by a written notice that as the goods had not been delivered he was deducting their value from the defendant's account. Beyond writing that notice the plaintiff did not make any written application with reference to the loss of the goods until more than fourteen days had elapsed.

In the statement of claim the plaintiff claimed damages, alternately, for breach of contract, negligence, and detainue. In the defence the defendants put in a general denial, and they relied on a condition, which they alleged to be just and reasonable, that no claim could be made for lost goods except within fourteen days. On the question of damages, the defendants said that the plaintiff consigned the goods as scrap iron and paid only the scrap rate, and in any case therefore he could not recover the amount claimed as the value of machinery.

The plaintiff had a monthly credit account with the defendants, and the form of application for a monthly credit signed by him contained a number of conditions, one of them, Condition 4, being—

Claims arising from loss, damage or delay must be made to the railway company's agent within three days by written application signed by the claimant. . . . No claim will be recognized or considered unless made within that time.

The consignment note signed by the plaintiff when the goods were dispatched had on the back a number of conditions, of which Condition 3 was—

No claim in respect of goods for loss or damage during the transit for which the company may be liable will be allowed unless the same be made in writing within three days after the delivery of the goods in respect of which the claim is made, such delivery to be considered complete at the termination of the transit as specified in Condition 6, or in case of non-delivery 14 days after dispatch.

After a long argument, Mr. Justice Roche delivered judgment. He said that the plaintiff was a dealer in second-hand machinery, and in April, 1918, he bought some obsolete machinery which

was put on the railway for carriage to Liverpool, and it started on 2nd April. It did not arrive at the dock, and from time to time the plaintiff called and inquired about it; he was told not to worry, for goods were frequently being delayed at the time. In May his monthly account was sent in, and he then intimated that he was going to claim for non-delivery of the goods. The defendants then went into the matter carefully, and discovered that a woman clerk in their employment, finding that the consignment was addressed to Rowlands assumed that the name must be a mistake for that of a firm of Rowlandson, which she knew, and she delivered the goods to Messrs. Rowlandson, who took them away and began to break them up. How Messrs. Rowlandson came to take goods which were not theirs did not appear, and they were not before the Court. At length, in August, the defendants obtained such of the goods as had not been broken up and they delivered them to the plaintiff, who accepted them without prejudice to his claim for damages.

The case, therefore, was one of short delivery, not one of complete non-delivery. That being so, Clause 3 of the conditions made the time for complaining not fourteen days from 2nd April but three days from the time of partial delivery in August, and as the plaintiff had complained long before that date the clause did not protect the defendants. The main defence therefore failed, and judgment must be given for the plaintiff.

### DAMAGES GENERALLY NOT RECOVERABLE ON OWNER'S RISK CONSIGNMENTS.

Generally speaking, damages are not recoverable on goods forwarded at the owner's risk, simply because one cannot, except in very rare and isolated cases, prove—as one must prove according to the terms and conditions under which the owner's risk rates are allowed—that the delay, damage or loss occurred as a result of *wilful misconduct* on the part of the company's servants.

The case of *Forder v. Great Western Railway Co.* (1905, 2 K.B. 532) is instructive on this point: In this case the plaintiff, a fella-monger, delivered to the Great Western Railway Co. at its Paddington Station, a consignment of sheepskins, to be carried to Winchester under the "O. R." conditions. The skins were injured in transit through being carried in a truck upon a bedding of wood

chips, which became entangled in the wool. The plaintiff complained to the railway company as to this mode of carrying skins, and was informed that the officials at Paddington had been asked not to forward another parcel in that manner. But, notwithstanding this, two months later another lot was injured in the same way and from the same cause. The County Court Judge dismissed the claim in respect of the first lot on the ground that there was no evidence of misconduct ; but held that, as the company's attention had been directed to the injurious mode of packing, it was guilty of misconduct for sending the second lot in the same way, and, accordingly, gave judgment for the plaintiff. The Appeal Court, however, reversed this decision, holding that as there was no evidence that the servants of the company who actually loaded the goods in the trucks, or who superintended the loading, were informed or knew that the mode of packing was likely to be injurious, there was no evidence of misconduct ; and that the mere fact that some other official of the company knew that the mode of packing was injurious was not sufficient. The Lord Chief Justice, in giving judgment, said that to make a railway company responsible " there must be a deliberate act on the part of the person alleged to be guilty of wilful misconduct. . . . The result of the judgment in the Court of Appeal is . . . that wilful misconduct in such a special condition means misconduct to which the will is party, as contra-distinguished from accident, and is far beyond any negligence, even gross and culpable negligence, and involves that a person wilfully misconducts himself who knows and appreciates that it is wrong conduct on his part in the existing circumstances to do, or fail or omit to do (as the case may be), a particular thing, and yet intentionally does, or fails or omits to do it, or persists in the act, failure, or omission, regardless of the consequences . . . or acts in reckless ignorance, not caring for the result."

Again, in *Lewis v. Great Western Railway Co.* (3 Q.B.D. 195 ; 47 L. J., Q.B. 131), the plaintiff, a cheese factor, directed his agent to forward by the railway a quantity of cheeses, and the agent signed a forwarding note containing the words, " owner's risk." The agent was aware from previous dealings that when goods were sent out at owner's risk the rate was less than when the company took the responsibility on itself, and he also knew the conditions in the consignment note used by the railway company, and



that it contained the terms on which goods taken at "owner's risk" were carried, but the note was not presented to him for signature or signed by him in respect of the cheeses in question. The effect of the consignment note was to relieve the company "from all liability in case of damage or delay, except upon proof that such loss, detention, or injury arose from wilful misconduct on the part of the company's servants." There it was held by the Court of Appeal that the terms of the consignment note limiting the company's risk were just and reasonable, and as the consignor had signed a forwarding note containing the words "owner's risk," there was, having regard to the course of dealing between the company and the consignor, a sufficient special contract that the goods were to be carried at the risk of the owner in consideration of the lower rate, plus the liability of the company for the "wilful misconduct" of its servants.

In the case of *Bastable v. North British Railway Co.* (XLIX, *Scottish Law Reporter*, p. 446) wilful misconduct was considered proven. The facts of this case are these: The owner of a switchback plant consigned it to a railway company for conveyance from Alva to Grahamston. The contract under which the goods were carried provided that the company was not to be liable for loss unless it arose from wilful misconduct on the part of its servants. The regulations of the company with respect to the dimensions of loads provided that: "These must not exceed those given in the Railway Clearing House Classification Book for the line or lines over which they have to pass, and must be gauged when there is any reason to doubt that they are not within the dimensions." In the course of the journey the goods were injured through coming in contact with a smoke-board suspended from a bridge through which they had to pass while being shunted into a siding. The evidence showed that there was good reason to doubt whether the goods would pass through the gauge. The station-master at Alva, instead of gauging the goods before dispatching them, judged the matter with his eye, and came to the conclusion that the load would pass through the gauge.

And in an action at the instance of the owner of the goods, the Court held that the omission to pass them under the gauge amounted to wilful misconduct. Lord Sherrington, in delivering judgment, said: "Upon the facts, as these were established at the proof, the



only question raised by this appeal is whether the station agent at Alva was guilty of wilful misconduct when he failed to use the gauge for the purpose of testing whether the loaded wagons containing the pursuer's engine and switchback plant were of such dimensions that they would certainly pass safely under all the overhead bridges of the defenders' railway on their journey from Alva to Grahamston. The Sheriff-Substitute has assolizied the defenders apparently upon the ground expressed in his fourth finding in fact, viz., 'That the station-master at Alva saw the trucks, considered whether it was necessary that they should be gauged, and decided that it was not necessary.' I agree in thinking that this finding is justified by the evidence, but the question remains whether the conduct of the station-master in failing to gauge the load did or did not, in the circumstances, amount to misconduct. If this question is answered in the affirmative, there is no difficulty in arriving at the conclusion that the station-master acted deliberately and intentionally, or, in other words, wilfully.

"The defenders' counsel argued that the station-master had committed a mere error of judgment in coming to the conclusion that the wagons would pass through the gauge. He founded specially upon the fact that the height of the load exceeded by very little the height of the gauge; that the same load (though in Caledonian Railway wagons) had come in safety to Alva station; and, lastly, that at Grahamston, where the accident occurred, the whole seven wagons containing the pursuer's goods passed twice under the bridge in safety, and that it was only on the third occasion when the wagons were being shunted under the extreme north side of the bridge, that one of them came in contact with an overhead smoke-board. I see nothing in the evidence to suggest that the station-master's estimate of the height of the wagons was made carelessly, but this very fact emphasizes the importance of the rule which he was admittedly bound to obey, and which required that 'all loads must be gauged when there is any reason to doubt that they are not within the dimensions.' The meaning and object of this rule are clear, viz., that whenever a load is such as to suggest a reasonable doubt whether it is of the specified dimensions, the question must be placed beyond doubt by applying the gauge, and must not be decided according to the skilled, though fallible, judgment of the official responsible for the safety of the train. In

the present case the height of the load was so slightly in excess of the height of the gauge that, according to the evidence of Mr. Roderick, the defenders' assistant engineer, 'no one with the naked eye could be expected to detect it.' To quote the language of other witnesses for the defenders who saw the wagons before the accident, the load struck them as being 'just about the maximum.' If that was not a case where the official responsible for the safety of the load 'had some reason to doubt' that his eye might possibly be mistaken, I do not know in what circumstances the rule would be applicable. The rule cannot mean that the responsible official is not to send forward a load which he has reason to believe may imperil the train. It would be idle to make a rule to the effect that a railway servant must not knowingly and intentionally expose life and property to what he himself regards as a possible peril. Accordingly, it was the duty of the station-agent at Alva to apply the gauge and not to trust to his eye. The station-master at Grahamston was asked: 'Do you ever allow a load like this to go out of your yard without being gauged?' To which he replied: 'It is impossible, it cannot. We can tell pretty well by the eye, but I would not rely on it.' The station-master at Alva chose to interpret the rule as meaning that he was entitled to dispense with the gauge and to rely on his eye alone in every case where he personally entertained no doubt that the load was within the maximum dimension. In so perverting the plain meaning of the rule, and in deliberately choosing to trust to his eye (which might be, and actually was, mistaken) rather than to use the gauge I am of opinion that the station-master wilfully failed to do his duty, and wilfully exposed the pursuer's goods to injury during the transit. For this wilful misconduct the defenders must pay damages, the amount of which has been assessed by the Sheriff, without objection, at £100."

In *Wills v. Great Western Railway Co.* (116 L.T.R. 615) the defendants contracted with the plaintiff to carry three consignments of carcasses. The contract provided that the company should not be liable for loss, damage, misdelivery, delay or detention unless it arose from the wilful misconduct of its servants, but should not be exempted from liability in case of non-delivery of any consignment, except where the company proved that the loss was not caused by negligence or misconduct. Clause 3 of the contract

provided that : " No claim in respect of goods for loss or damage during the transit, for which the company may be liable, will be allowed unless the same be made in writing within three days after delivery of the goods in respect of which the claim is made, such delivery to be considered complete at the termination of the transit, as specified in Condition 6, or in the case of non-delivery of any package or consignment within fourteen days after dispatch."

A part of each consignment was not delivered, and the plaintiff made a claim within fourteen days after dispatch. In an action by the plaintiff against the defendants to recover damages the defendants failed to disprove negligence or misconduct ; and the County Court held that a consignment was not delivered if a part of it was not delivered, and that therefore the plaintiff was entitled to damages. In the Appeal Court the railway company contended that the first part of the clause quoted above speaks of a claim in respect of goods for loss, and provides that the claim must be made within three days after delivery of the goods in respect of which the claim is made, i.e. of the lost goods ; but Lord Justice Buckley described this contention as " nonsense " and said : " I read the first part of condition 3 as confined to claims in respect of goods which have been delivered. It names a period of limitation of three days after their delivery, during which the consignee can examine them and see whether he has suffered any loss in respect of them. The second part then refers to the other case where the goods have not been delivered. . . . Non-delivery of the consignment includes non-delivery of part of the consignment." On appeal to the House of Lords, however, this decision was reversed, and the House held that the failure to deliver a portion of the consignment was not non-delivery of the consignment, and that the plaintiff was not entitled to damages.

### LIABILITY RESTS WITH CONTRACTING COMPANY.

Sometimes a claim is turned down on the ground that the company upon which it is made is not liable. This reply is given in those cases where the consignment upon which the claim is made is handled by more than one railway company. As a rule, when a claim of this character arises, the company which delivers the goods is empowered by the company from which it received the parcel for transmission to effect a satisfactory settlement ;

but sometimes such authority is refused, and in that case the delivering company has really no alternative but to refer the claimant to the former company. He—the claimant—should then lodge his claim with the contracting company, i.e. the railway company which originally accepted the goods for conveyance, as it is that company which is legally responsible. For example, in *Tuohy v. Great Southern and Western Railway Co.* (1898, 2 *Ir.R.* 789), it was shown that a consignment of goods was sent from Manchester to Limerick, and was damaged during transit. The consignee sued the Irish company—the company which merely carried the goods from Dublin to Limerick—but as there was no evidence to show on what part of the journey the damage occurred, it was held that the delivering company was not liable.

Again, in *Miller v. The Dumbarton and Balloch Joint Line*, furniture had been consigned from Lowestoft with the Midland and Great Northern Railways Joint Committee; the furniture, on arrival, was found to have been badly damaged, and both parties admitted that it was impossible to say on which railway line the damage had been done. The action, however, was brought against the delivering company, and it was dismissed on the principle that where a contract has been made with a railway company for through carriage, the consignee cannot sue for breach of the contract anybody but the original carrier with whom the contract was made.

And here is a County Court case, quoted rather fully because it bears out several statements which have been made with regard to the folly of suing the delivering company, the time limit for claims, and so on.

In the Bow County Court, in Dec., 1913, before his Honour Judge Smyly, K.C., Sydney Geo. Hawke, of 38 Adelaide Buildings, Ann Street, Poplar, sued the Great Western Railway Goods Station, Poplar, to recover £2 10s. damage done to furniture in transit from Wales to London. Mr. K. J. Maples appeared for the Great Western Railway Co., and said he should like to save his Honour's time and shorten the case by saying that they were not the contracting carriers.

The plaintiff said he delivered the furniture at Tumble Station, seven miles outside Llanelly, and produced the receipt. Mr. K. Maples said he would point out that the receipt was not that of



the Great Western Railway Co., but of the contracting carriers, the Llanelly and Mynydd Mawr Railway Co. Plaintiff: "For five months the defence to this action by the Great Western Railway Co. has been that the goods were not properly packed, and now they are setting up that they are not the carriers. Anyway, I received the furniture from them, and it was all smashed to bits then, or practically was." Mr. Maples: "It is quite clear the Llanelly and Mynydd Mawr Railway Co. are the contracting carriers." Plaintiff: "But they only take it to Llanelly, and then it is handed over to the Great Western Railway Co." Mr. Maples: "And then, again, there is the three-day clause, but I am not taking that point." Judge Smyly: "You have signed this note, and appear to be bound by it. You have handed the goods to them, and they have handed them on to the Great Western Railway Co. as their agents only. They are the responsible parties, apparently, not the Great Western Railway Co." Plaintiff: "But I have paid the Great Western Railway Co. for the carriage." Judge Smyly: "But that does not alter the fact that your original contract was with the Llanelly Co." Plaintiff: "It is a most extraordinary thing, because right from the start of my complaining the Great Western Railway Co. have taken upon themselves to answer all the correspondence, and take to themselves all the responsibility." Judge Smyly: "Yes, because they are the agents who delivered the goods to you; that does not make them in any way liable for the damage that has been done, if any. When you handed in these goods you got a receipt." Plaintiff: "The only receipt I got was the one I have produced from the Welsh railway." Judge Smyly: "And on that I can see nothing as to bad packing or complaint of anything." Plaintiff: "No, and yet when the goods were delivered the furniture was tied up with bits of string." Judge Smyly: "I can do nothing for you, and the best way would be for me to non-suit you, and that will keep the matter alive for you." Mr. Maples: "I should like to make a statement, your Honour, and say that we have no doubt that this is a perfectly *bona fide* claim, but as we have been unable to come to a settlement with the Llanelly and Mynydd Mawr Railway Co., we can do nothing." Judge Smyly: "It is a great pity you did not tell him all about it, and save him this bother." Mr. Maples: "We did." Plaintiff: "But not till last Friday, when the action had been entered and was down for



hearing." Mr. Maples : " The whole fault seems to lie in the fact that they should have taken this as unpacked furniture, and did not. That is where the mistake has come in." Judge Smyly : " The best I can do for this unfortunate plaintiff is to non-suit him, which will leave it open to him to bring another action against the other company, if he wishes to. I suppose you do not ask for costs in this case ? " Mr. Maples : " Well, I do, simply as a measure of protection." Plaintiff : " Then what can I do ? " Judge Smyly : " Make an arrangement with the other railway company."

A non-suit was then entered.

### CONTRACTING COMPANY'S LIABILITY EXTENDS TO END OF JOURNEY.

But now and again this excuse—the excuse that the company to which the claim is submitted is not liable—is given even when the account is sent to the contracting company, e.g. when the goods have to travel over both the land and the sea. A railway company, cannot, however, legally defend itself by saying that it has no power to carry by sea, or that it is not responsible for what occurs whilst a consignment is in the hands of another company, for it was held in several cases that the contracting company's liability continues to the journey's end.

What Section 14 of the Regulation of Railways Act, 1868, actually says is this : " Where a company by through booking contracts to carry any animals, luggage, or goods from place to place partly by railway and partly by sea, or partly by canal and partly by sea, a condition exempting the company from liability for any loss or damage which may arise during the carriage of such animals, luggage, or goods, by sea, from the act of God, the King's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, shall, if published in a conspicuous manner in the office where such through booking is effected, *and if printed in a legible manner on the receipt or freight note which the company gives for such animals, luggage, or goods*, be valid as part of the contract between the consignor of such animals, luggage, or goods and the company, in the same manner as if the company had signed and delivered to the consignor

a bill of lading containing such condition. For the purpose of this section, the word 'company' includes the owners, lessees, or managers of any canal or other inland navigation."

In *Wilby v. West Cornwall Railway Co.* (1858, 27 L. J., Ex. 181) goods were delivered to a railway company to be conveyed from Penzance to Wolverhampton, a place beyond the limits of the company's line, and with which it had no communication. It was held that the Court might and would infer a contract to carry the whole distance, although the goods were directed to be conveyed part of the way by sea, and by a different route from that which would have been adopted by the company if no such direction had been given.

Again, in *Doolan v. Midland Railway Co.* (2 App. Cas. 792), a railway company, having no special powers to work steam vessels, contracted to convey the plaintiff's cattle from Dublin by sea to Liverpool, and thence by railway to St. Ives. The cattle were lost on the passage to Liverpool through the negligence of the crew of the steam vessel, with the owners of which the railway company had a through booking arrangement for the conveyance of their traffic. The contract was made subject to a written condition exempting the railway company from liability for "loss of, or any damage or injury to, animals, goods, or property entrusted to them, arising from the dangers or accidents of the sea, or of steam navigation, the act of God, the Queen's enemies, jettison, barratry, collision, improper, careless or unskilful navigation, accidents connected with machinery or boilers, or any default or negligence of the master or any of the officers or crews of the company's vessels." The Appeal Court held that the contract was governed by Section 7 of the Railway and Canal Traffic Act, 1854, that the words, "master and crew of the company's vessels" in this condition applied to all such vessels as the company should employ, and not merely to vessels worked or owned by the company itself, and that the condition was unreasonable and void.

In *Shepherd v. Bristol and Exeter Railway Co.* (37 L. J., Ex. 113; L.R. 8, Ex. 189) Martin, B., said: "When two companies are connected in business together, so that one of them receives goods to be conveyed over the line of the other, I think there is but one contract, and that it is made between the customer and the receiving railway company, and that their liability is just the same as if

they had been the owners of the railway the whole way upon which the goods are to be conveyed. This I have understood to be the law ever since *Muschamp v. Lancashire and Preston Railway Co.*, and in my opinion it should be steadily adhered to."

In *Mahony v. Waterford, Etc., Railway Co.* (1900, 2 *Ir. R.* 273) goods were consigned to an Irish railway company for conveyance over part of its line, and thence by certain other railway companies to Bradford, in England. The goods were carried at a reduced rate at owner's risk, under the conditions of a consignment note signed by the consignor. One of these conditions was that "at a reduced rate the company carry at owner's risk, and are exempt from all liability not occasioned by the wilful misconduct of their servants, acting within the scope of authority"; another condition was that the company would not be liable for through traffic outside or beyond its own railway. The goods arrived at Bradford in a damaged condition; the damage was due to wilful misconduct, but it was not proved where or when such misconduct occurred. The Irish Court of Queen's Bench held that the condition exempting the company from liability for loss occurring outside its own railway was valid, provided that it was able to prove that the damage occurred after the goods had left its line, but that the onus of proof lay upon the company and it had failed to discharge it, and was, therefore, liable.

Here is a Scottish case which supports the foregoing. In *Logan v. The Highland Railway Co.* (2 *F.* 292) the defendant company received at I. a piano upon the terms of a consignment note, the material parts of which were as follows—

The Highland Railway Company will please receive the undermentioned goods and forward them subject to the conditions on the back hereof:

Address: *Kirkwall, Orkney.*

Mode of transit: *Goods (i.e. goods train) and steamer, viâ Aberdeen.*

Who pays carriage: *Senders to Aberdeen only. Consignee pays steamer freight.*

One of the conditions on the back was that, in respect of goods booked through partly by railway and partly by sea, "the company shall be exempted from liability" for any loss or damage during the carriage by sea from accidents from machinery, boiler, and steam.

The company's own line ended at K., whence the case containing the piano was conveyed to Aberdeen by the Great North of Scotland Railway Co., which, in turn, handed it to a steamship company. Upon arrival at Kirkwall the piano was found to be damaged, but it was not proved when or where such damage occurred. The Inner House of the Court of Session decided that the railway company was liable for the amount of the injury sustained, notwithstanding that it was not entitled to charge for carriage beyond Aberdeen, the Court holding that the consignment note was to be construed as a contract by the company to carry the goods from I. to Kirkwall, and that it had undertaken the responsibility for the transit of the piano to its destination.

### BROKEN AND UNSIGNED CONTRACTS NOT BINDING.

If there is any breach of contract on the part of the company, the owner of the goods can succeed. Thus, in *Polwarth v. North British Railway Co.* (1908, S.C. 1275), a railway company agreed with the owner of three head of cattle consigned by rail from Maxton Station to Alnwick, *via* Kelso, for exhibition at a cattle show at Alnwick, that if they were not sold they should be taken back to Maxton at half-fare, provided the owner consigned them by the same route as that by which they had been sent, and undertook the risk of their conveyance. Between Kelso and Alnwick there were two railway routes equally convenient, one by Wooler, the other by Tweedmouth. The railway company sent the cattle to Alnwick by the Wooler route. The cattle were not sold at the show, and the owner's agent, in sending them back from Alnwick station, signed a consignment note stating that they were sent for carriage back to Maxton "by the same route as on the journey here, at the reduced rate," and in consideration of your charging such reduced rate, "the undersigned agrees to free and relieve you of all liability" for loss or damage, unless caused by wilful misconduct on the part of its servants. The railway company chose to send the cattle back by the Tweedmouth route, and they were destroyed by fire at Tweedmouth station. In an action by the owner against the railway company for £800, as the value of the cattle, the defendants maintained—first, that they were not liable, as they had sent them back by the route contracted for, namely, by Kelso; secondly, that the stipulation that they should



be returned by the same route was a stipulation solely for their own benefit, and conferred no right on the sender of the cattle ; and, thirdly, that in any view their liability was restricted to £15 for each animal in respect that no declaration of an excess value was made on behalf of the owner in terms of Section 7 of the Railway and Canal Traffic Act, 1854. It was held, that the railway company had broken the contract and could not rely on the indemnity clause therein ; but, secondly, that the liability for the loss of the cattle was limited to £15 per animal.

In no case, however, are the owner's risk conditions binding unless the contract for carriage be actually signed by the contracting party. This was decided in *Peek v. North Staffordshire Railway Co.* (10 H.L. 473) which establishes these three points : that a condition of this kind must be in writing in order to bind the trader ; that it must be proved to the satisfaction of the Court to be a reasonable condition ; and that the onus of showing that it is a reasonable condition rests upon the railway company which alleges it. There are many other cases which show that the special contract must be reasonable and that it lies upon the company to prove its reasonableness ; and whether a contract is " just and reasonable " within Section 7 is to be determined by the Court or Judge alone, and is not a question proper to be left to a jury, even though questions of fact be involved in its determination. (Per Lord Herschell in *Great Western Railway Co. v. McCarthy*, 12 A.C. at page 229.)

## LOSS OR DAMAGE RESULTING FROM STRIKES.

The first important test case was that of *Sims & Co. v. Midland Railway Co.*, which came before the Appeal Court in November, 1912, and the facts of which are these. On 17th August, 1911, the plaintiffs delivered butter to the value of £8 2s. to the defendants for carriage from Bristol to Whitecroft. The butter arrived at Sharpness about 7.58 a.m. on the 18th, and whilst there a general strike broke out, in which the servants of the defendants were involved, with the result that the butter remained at Sharpness during 18th and 19th August. Owing to the heat of the weather the butter began to melt, and the station-master at Sharpness sold it on August 19th for £4 4s. In these circumstances the plaintiffs brought an action against the defendants, claiming



£8 2s. as damages for breach of their contract to deliver the butter. The County Court judge gave judgment for the plaintiffs upon the ground that the defendants' failure to deliver the butter was due to the default of their own servants. From this decision the defendants appealed.

In the Appeal Court, Mr. Justice Ridley held that, upon the facts before the Court, the defendants were entitled to succeed because they proved that the goods in question could not have been delivered within a reasonable time in the circumstances of the case, and that the delay in delivery was not due to any default on their part. The result was that the judgment of the County Court judge must be set aside.

Mr. Justice Scrutton said the question was whether, in calculating the reasonable term within which the goods should have been delivered, the railway company were entitled to take into account the strike of their own men, and, if so, whether the circumstances which happened justified them in selling the goods instead of keeping them and delivering them when the strike was over. With great respect to the County Court judge, he was unable to agree with the view he had taken. Up to the time of the decision in *Hick v. Raymond & Reid*, it was not quite clear to what extent you could take into account refusal of people whom you employed to do work; but in that case it was held that you were entitled to take into account, in calculating the reasonable time, all the existing circumstances, including the fact that the servants of the sub-contractor employed to do the work struck and refused to work, and *Hick v. Raymond & Reid* was argued upon the assumption that during the whole of the time it was not possible to find labour elsewhere.

His Lordship was of opinion that there was no difference in principle between the case of a strike of servants in the regular service of the carrier and the case of a strike of servants of a sub-contractor employed by the carrier to carry out the work; and that in calculating the reasonable time you were entitled to take into account the strike of the regular servants of the carrier, provided the circumstances in existence were not brought about by his default, and of that there was no trace in the present case. His Lordship was therefore of opinion that the County Court judge had taken a wrong view upon this point, and that he should

have gone on to consider whether, taking the strike into account, the necessity had arisen justifying the sale of the goods.

Then in March, 1920, the case of *Springer v. Great Western Railway* came up for decision. In this case it was shown that in September, 1918, Mr. Barney Springer dispatched a large quantity of tomatoes by the Great Western Railway Co. from Jersey. The goods were destined for Covent Garden Market. On the arrival of the vessel at Weymouth a railway strike had broken out, and the company, seeing that there was no prospect of being able to complete carriage of the goods, which were likely to become bad, sold them without reference to the owner. The owner sued the railway company for breach of duty.

Mr. Justice Salter, in delivering judgment, said that the company before it sold the goods had a duty to endeavour to communicate with the owner, and it did not do so. He could not accept the contention that it was for the carriers to judge whether any useful purpose would be served by communicating with the owner before they sold, and he therefore held that the sale of the goods by the railway company was a breach of contract to carry, and was a wrongful conversion of the goods. He gave judgment for the plaintiff for £75 18s.

About the same time—in the Hitchin County Court—a poultry farmer claimed £2 10s., the value of three stock fowls consigned by the Great Northern Co. for delivery at Guildford. When the fowls were received at King's Cross a strike had broken out, and they had to be sold by auction. It was argued for the company that though they might have been liable if the strike had been confined to their own employees, neither the company nor their servants could be held responsible for what was due to a general strike. In this case the judge held that no neglect of the company or their servants had been proved, and he gave judgment for the defendants.

It will be seen that in the first case two judges of Appeal Court held that in the event of a strike a railway company could decide for themselves what to do with goods which they were unable to deliver; in the second case this view was not accepted, the judge holding that the owner should be communicated with before a consignment was disposed of; whilst the decision in the third case was apparently based on the ruling in the first case.

But now the Railway Rates Tribunal have approved of a condition—No. 17 of the “Standard Terms and Conditions of Conveyance”—which provides that: “The company shall not in any case be liable for . . . riots, civil commotions, strikes, lock-outs, stoppage, or restraint of labour from whatever cause, whether partial or general.”

### THIRD PARTY LIABILITY.

One of the most amazing cases—from the railway trader's point of view—which has been before the Courts during recent years is that of the *Great Western Railway Co. v. Macpherson & Co.*, decided in the Manchester County Court in February, 1918.

The case in question raised the important point as to the liability of consignors to common carriers for damage done to goods of other owners, which are carried in the same truck as those consigned. The facts are as follows and are quoted rather fully owing to the extreme importance of the decision and its ultimate bearing. The defendants, who were oil merchants, bought from another firm twenty casks of lubricating oil. One of these casks was consigned by the defendants to the Windsor Gas Co., and *en route* some of the oil escaped from the cask and damaged other goods in the same truck. The action was originally brought by the plaintiffs for damages for breach of contract, but during the hearing the claim was amended to one for damages for a breach of an implied warranty that the goods consigned were in a fit state to be carried.

The cooper from the original vendors of the oil, who were oil distillers, was called and explained the testing, and subsequent filling of the casks. The staves of each cask were first examined and then the iron hoops. The casks were then steamed, and after some time a gallon of boiling glue was poured into each cask. The casks were then shaken and rolled about; such glue as did not adhere to the inside of a cask was then taken out. It was said that if there had been any hole in a cask its presence would be located by steam from the glue. The cask was left to dry, then painted, and afterwards filled with oil. The casks were large ones, holding some sixty to seventy gallons. Each cask had two bung holes, one called the belly bung hole in the centre of the

cask when on its side, and the other at one end of the cask in a straight line from the belly bung hole. This latter one was about half-an-inch from the rim of the cask, the edge of the end of the cask being slightly bevelled, that is, the part immediately next to the rim of the cask. The bung holes were then plugged with corks and a strip of metal was fastened over each. Undoubtedly the oil eventually oozed out through the wood between the bung hole and the rim. At the vendors' premises the casks when filled were placed right end up, that is, with the end bung hole uppermost. The casks were sent to the defendants and on arrival there were placed on their sides with the side bung hole at the top. One of the casks was then examined by the defendants' manager. He said that he thoroughly examined it, shook it, and rolled it about and placed it for about ten minutes with the end bung hole on the ground. The cask to all appearances looked perfectly sound. There was no leakage whatever, and the defect in the wood could not have been discovered by any of the tests that were applied to the cask. The only way, to judge by the result, was to have left the cask for some hours with the bung hole down. Evidently the half-inch of wood between the bung and the nipple was defective. It gradually got soaked through and became spongy after some hours. The cask to all appearances looked perfectly sound, was labelled and delivered to the plaintiffs' carman, who rolled it up a ladder on to his lorry and took it to the station. There it was rolled on to a truck, but unfortunately was placed on its end *with the bung downwards*. It was suggested by the defendants that that was negligence on the part of the loader, inasmuch as there was a label near the bung hole. The label had nothing special on it besides the address, such as "this side up," and there was nothing to indicate that there would be any danger if so placed, and it was admitted that if there had been no defect in the wood, the cask of oil would have travelled in that position quite safely. Something also was suggested as to the existence of special orders with reference to oil casks, but that was denied and none was proved. Something also was said about a nail being in the truck and making a hole in the wood, but there was no mark of any nail, nor was any nail found sticking in it. Some suggestion was also made of iron clamps having been used, but that was denied. The cask was securely packed with other goods in the



truck and dispatched. It took over two days in arriving at Reading. The leakage of the oil was there noticed. Evidently the wood was in fact defective between the bung hole and the rim, and after becoming saturated the oil began to ooze through. It was found that about a third of the oil had escaped, and it was for the value of that oil that the defendants counterclaimed.

In giving judgment, His Honour, Judge Mellor, K.C., who tried the case, said: "I find that there was no negligence on either side, and the question arises whether there is an implied warranty on the part of the consignor who delivers goods to a common carrier to be carried, in conformity with his obligation that the goods are in a proper condition to be carried.

"The plaintiffs based their argument on *Brass v. Maitland* (6 E. & B. 470) and *Bamfield v. Goole and Sheffield Transport Co., Ltd.* (1910, 2 K.B. 94). In both these cases the goods carried had the elements of danger in them, whereas in this case the oil itself was harmless, and a great deal was said as to the duty of a consignor to give notice under such circumstances. In the present case there was no duty on the consignor to give any notice. In *Brass v. Maitland* the plaintiff was the owner of a general ship; whereas in *Bamfield v. Goole* the plaintiff was a common carrier, as in the present case.

"In *Bamfield v. Goole*, at page 101, Vaughan Williams, L.J., says that Lord Blackburn, in dealing with *Brass v. Maitland*, must be taken to mean, that in that case the majority of the Court were of opinion that a consignor warrants that the goods are fit to be carried and not dangerous, and at page 107 Lord Moulton says: 'The cardinal fact in this case is that common carriers have a duty to carry the goods tendered to them for a fair price unless there is a reasonable excuse, and these goods being tendered to him as general cargo by the defendant, the plaintiff's husband was in law bound to carry them, unless there was a reasonable ground for his refusing to do so. There is no suggestion that would justify his refusing to carry the casks, and therefore we must hold that, as a common carrier, he was bound to carry these casks on their being so tendered to him. That being so, I should have felt bound to hold, even if the matter were *res integra*, that there was a correlative duty on the part of the tenderer that the goods should be fit and proper for carriage. It seems to me to be



consonant with, and required by the fundamental principles of English Law, that one who thus required an individual to perform a legal duty implicitly warrants that he had a title to make the request.' And at page 111 the same learned Lord Justice says that if a consignor calls upon the carriers to perform the common law duty of carrying the goods he must take care either that he gives notice of their nature (which was necessary in this case, as the plaintiffs knew what was to be carried, and the risk to be run) or that they are fit to be carried as ordinary goods. Farwell, L.J., at page 113 says: 'The principle on which the judgment rests is the common law obligation of the carrier to carry according to his profession and the correlative obligation of the consignor to tender for carriage such goods only as can be safely carried. Every consignor who tenders goods to a common carrier, thereby implicitly warrants that the goods so tendered are fit to be carried in the ordinary way.'

"Later, at page 116, he gives instances of a consignor's liability, among them if the goods are ill packed, such as petroleum in a cask that develops a leak and soaks the other owners' goods, he is liable.

"Although the facts in this case are somewhat different from the cases cited, in that the oil was perfectly harmless in itself and was known to be so to both parties, the principle to be deduced from them seems to be that when a consignor delivers goods to a common carrier to be carried, the common carrier being under a common law obligation to carry unless he has a reasonable excuse for not doing so, implicitly warrants that such goods are in a fit and proper condition to be carried. In this case although both parties knew what the cask contained, and both parties thought that it was in a proper condition to be carried, it seems only right that the person who calls upon another to perform his obligation should be the one who should suffer, should any damage arise from the goods to those of other owners, even if the defect in packing could not have been discovered by any reasonable means. In the case of a Ministerial duty this principle has been recognized by the House of Lords in the case of *Sheffield Corporation v. Barclay* (1905, A.C. 392), and I cannot see any reason why it should not equally apply in the case of a common law obligation."

Now, with all due respect to the learned judge who tried this

case, the writer holds firmly to the view that this decision is entirely wrong and would not be upheld if appealed against. Indeed, it is much to be regretted that Judge Mellor did not know or was not told, on behalf of the defendants, that it is an instruction of the railway company to their servants that all liquid traffic in drums and casks must be loaded *bung upwards*. Here are the standard instructions of the London Midland and Scottish Railway Co. in regard to the loading of oil in casks other than mineral oil, and these are typical of the instructions of all the railway companies—

1. Casks containing more than 54 gallons must be loaded "on side" lengthwise of the trucks, and very carefully scotched.

2. Casks containing 54 gallons or less must be loaded "on end" in the case of full loads, either of casks, or partly casks and partly other goods, care being taken not to employ trucks having sides of less than 21 inches in depth. When there is not a full load the casks must be loaded "on side" lengthwise and carefully scotched.

3. The bungs of all casks loaded "on side" must be placed uppermost.

This instruction was not observed by the carman who handled this consignment and who—as has been seen—rolled the casks into the truck at the railway station and "unfortunately" (to use the words of the judge himself) "placed them bung downwards." In other words, the carman failed in his obvious duty, notwithstanding which the defendant had to pay.

Since this decision was given a number of firms have been presented by the railway companies with claims for damage alleged to have been done in transit by their goods to the goods of a third party, but the wise trader will refuse to pay any such claim. Probably no one has done more than the present writer to encourage traders to pack their goods well—indeed, years before the railway companies themselves began to advertise the virtues of good packing the writer had—through the medium of his books and articles—appealed time and again to manufacturers to pack all their railway consignments well and securely, and so help the carriers to ensure good and safe delivery into the customer's possession; but he does feel that when traffic is improperly loaded—as this oil evidently was—and damage results, the railway company should not seek to throw the responsibility on to the unfortunate trader, and that is actually what has occurred and is occurring.

## IMPORTANT DECISIONS UNDER THE CARRIERS ACT, 1830.

The preamble to the Carriers Act, 1830, states that "by reason of the frequent practice of bankers and others of sending by . . . public conveyances . . . *articles of great value in small compass* . . . the responsibility . . . of common carriers is greatly increased," and to afford greater protection to these carriers it is enacted by this measure that no common carrier shall be liable for the loss of or injury to various articles, including glass, "contained in any *parcel or package*" when the value thereof exceeds £10, unless at the time of forwarding the greater value is declared and insurance effected.

Until comparatively recently the railway companies have not defended themselves behind this Act when a large consignment—say several large crates or casks—of cheap and common glassware has been lost or damaged in transit, but now the Carriers Act is always quoted in defence (if insurance has not been effected), the railway companies' argument being that the words "in small compass" do not limit the application of the Act to very small packages and that the term "glass" refers to glass of all kinds and descriptions. The question therefore arises, Is this a legal defence?

### "PARCEL OR PACKAGE" DEFINED.

First of all, take the case of *Whaite v. L. & Y. Railway Company* (L.R. 9 Ex. 67). Here the plaintiff sent a quantity of goods by the defendants' railway packed in a wagon. Amongst the things were ten oil paintings worth £100 in all. The rest of the things in the wagon were articles not mentioned in the Act. The train in which this wagon was loaded met with a collision, and the pictures were entirely destroyed, while the other property was damaged to the extent of about £50. The plaintiff sued the company for his loss, and it was contended on his behalf that the company were liable for the value of the pictures, as they were not in a parcel or package, and a wagon could not be properly described as either a parcel or a package.

In delivering judgment, Bramwell, B., said: "I think that this wagon with what was in it was a 'parcel or package' within the meaning of the Carriers Act. The words are 'articles of property of the descriptions' specified 'contained in any parcel or package.' Although, commonly speaking, a person would say 'this is a wagon, not a parcel or package,' yet looking at the statute, its object and

meaning, we are not only justified, but compelled, to say that it was a package or parcel within the meaning of the Act. It is remarkable that there is authority for this view in the words of the plaintiff's manager, who said 'I packed these goods'; no one would doubt that this was a correct expression. Then if the goods were packed, it was a package. Moreover, there is this quality of a package about it, that, though the wagon was so packed that the defendants could see that they were pictures of some sort, yet they could not see what pictures nor of what nature they were, their exact character being concealed by the mode of packing adopted by the plaintiffs."

Cleasby, B., said: "I agree. It is plain that if the value and nature of the contents of the wagon had been declared at the time, the defendants would have been entitled, under Section 2, to demand an increased rate in the manner specified, which they could not do unless it was a 'parcel or package.' It would be absurd to suppose that because a parcel is of immense size and value it ceases to be a parcel."

And Pollock, B., said: "I am of the same opinion. The fact that both words 'parcel' and 'package' are used assists us in determining what either of them means. The plaintiff's own evidence was, 'all these paintings were packed in my four-wheeled wagon, which has wooden sides but no top.' It is as if a person said, 'I packed all my silver forks in a wooden box to which I could not put a top because it was too full'; that would not prevent its being a parcel or package."

Judgment was accordingly given for the railway company.

### THE DEFINITION OF GLASS.

Next, take the case of *Owen v. Burnett* (1834, 3 L.J. Ex. 76), where a looking-glass of the value of £40 packed in a case was sent to a carrier's office for conveyance, the words "Plate Glass," "Looking Glass," and "Keep this edge upwards" being written on the case to ensure safety. For the claimant it was argued that a package of this description did not fall within the Carriers Act, but the Court refused to accept this plea and in delivering judgment, Bayley, B., said: "In this case I entertain no doubt upon the first point whether a looking glass of the dimensions in question is within the meaning of the Act; we are all of opinion that it is. In the first place, it

falls within the express words of the first section, viz., as "Glass," and unless we see something in the clause which confines its operation to some particular description of glass, the protection of the Act extends to the carrier in this case. It has been ingeniously argued that the Act does not apply to glass of this description because the package containing it must be and here was of considerable weight and size, and the preamble has the words 'articles of great value in small compass,' and it was said, therefore, that the Act does not apply to any of the specified articles unless they are of 'great value in small compass.' If such was the intention of the legislature I should expect to find these words in the enacting clause; and not finding them it may be said that that has occurred here which does not occur very frequently, namely, that the enacting part goes beyond the preamble and the mischief recited; that the mischief recited is particular and the enacting clause general. . . . Glass is mentioned generally, and why is the Act not to apply to glass of every description, if of the requisite value? It is a commodity which requires considerable particular attention and in respect of which the carrier is exposed to great risk and hazard from its brittle nature. The word glass is unqualified and unlimited and I cannot see that we are justified in saying it applies to glass in a small compass only and not of every description."

It will therefore be seen that a very wide interpretation has been put upon the words "parcel or package"—an interpretation wide enough, in fact, to include even a furniture removal van—and the term "glass" embraces glass of all descriptions.



## CHAPTER XIII

### THE THEORY AND PRACTICE OF RAILWAY RATE MAKING FOR GOODS TRAIN TRAFFIC

It is essential that a traffic manager should possess a thorough knowledge of both the theory and the practice of railway rate making, so that he may be sure (1) that the rates charged to his employers for the conveyance of their goods over the railways are within the legal maxima ; (2) that any rebates to which they are legitimately entitled are duly allowed ; and (3) that they are not placed at a disadvantage through their competitors in the trade being unduly preferred by means of low and inequitable rates for the conveyance of their produce.

Rebates and undue preference will form the subject of separate chapters ; this one will be devoted exclusively to railway rate making.

#### **A FULL STANDARD RATE COMPRISES MANY CHARGES.**

A full standard rate, as distinct from an "exceptional" railway rate, which will be dealt with later, is made up of a separate and distinct charge for several different services, i.e. the provision by the railway company of station accommodation at each end of the journey, the performance by them of the necessary handling services (loading and unloading, covering and uncovering) at each end, and for conveyance along the line from one station to the other, or "haulage," as it is sometimes called, and—in respect of some classes of traffic—for the provision of trucks ; and the maximum charge which the railway companies may make for any of these various services was settled by the Railway Rates Tribunal in accordance with Sections 30 and 31 of the Railways Act, 1921.

The railways of the United Kingdom have, of course (again as the result of the provisions of the Railways Act, 1921, Section 1), been amalgamated into four big groups, namely, the London Midland & Scottish, the Great Western, the London and North Eastern, and the Southern Railway Companies, and the "Schedule of Standard Charges" for any of these groups is obtainable from H.M. Stationery Office, Kingsway, London, W.C.2, price 1s. 6d. net.

It is not possible or desirable to reproduce the whole of these Schedules in this book, as we are here, in this chapter, concerned only with the theory of railway rate making, and it will be sufficient for our present purpose if we refer only to the L.M. & S. Railway Company's scale of standard charges in respect of goods and minerals, except coal, coke, and patent fuel, by merchandise train, applicable to traffic elsewhere than in Scotland. This will be found on page 201.

### HOW A STANDARD RATE IS BUILT UP.

Now with this scale before him—and every big consumer of railway transport will be well advised to have the Schedules of the four railway groups in his possession for ready reference—the traffic manager can very soon tell what is the maximum charge per ton which the L.M. & S. Railway Company may make for the carriage of any particular class of goods between any pair of stations, once the distance is known. Thus, assuming that the distance between A and B is 100 miles, and that he wishes to know what is the standard charge on a certain traffic in Class 15, he must make his calculation in this way—

		<i>s.</i>	<i>d.</i>
Station terminal at the forwarding end . . . . .		2	5-00
Loading . . . . .			11-00
Covering . . . . .			3-00
Conveyance—			
First 20 miles at 4-75d. . . . .		7	11-00
Next 30 „ „ 3-45d. . . . .		8	7-50
Next 50 „ „ 3-00d. . . . .		12	6-00
Station terminal at the delivery end . . . . .		2	5-00
Uncovering . . . . .			3-00
Unloading . . . . .			11-00
STANDARD RATE PER TON . . . . .		36	2-50

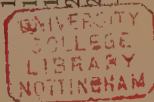
That, simply put, is how a standard railway rate is arrived at, but care must be taken in each and every instance to see that only those charges which can be legitimately made by the railway company are included in any such calculation. For instance, if the traffic is to be conveyed in owner's wagons no charge for "wagon hire" should be included; again, if the traffic is to go from or into a private siding no "station" or "service" terminal should be included for that end of the journey unless it is known that an appropriate rebate will be made in respect of the non-provision of

THE LONDON MIDLAND AND SCOTTISH RAILWAY COMPANY'S  
SCALE OF STANDARD CHARGES IN RESPECT OF GOODS AND MINERALS, EXCEPT COAL, COKE, AND PATENT  
FUEL, BY MERCHANDISE TRAIN

APPLICABLE TO TRAFFIC ELSEWHERE THAN IN SCOTLAND

Class in respect of Merchandise to which charges are applicable	Standard Rates for Conveyance				Station Terminal at each end	Standard Terminals			
	For the first 20 miles or any part of such Distance	For the next 30 miles or any part of such Distance	For the next 50 miles or any part of such Distance	For the remainder of the Distance		Service Terminals			
						Loading.	Unloading	Covering	Uncovering
	Per ton Per mile d.	Per ton Per mile d.	Per ton Per mile d.	Per ton Per mile d.	Per ton s. d.	Per ton s. d.	Per ton s. d.	Per ton d.	
1 } In Owner's 2 } wago 3 } 4 }	1-90	0-95	0-55	0-50	0 3	—	—	—	
	2-15	1-05	0-70	0-65	0 5	—	—	—	
	2-25	1-10	0-80	0-70	0 6	—	—	—	
	2-30	1-20	0-90	0-75	0 10	—	—	—	
5 } 6 } 7 } 8 } 9 } 10 } 11 } 12 } 13 } In Railway 14 } Company's 15 } wago 16 } 17 } 18 } 19 } 20 } 21 }	2-60	1-25	0-95	0-75	0 6	—	—	—	
	2-65	1-35	1-05	0-80	0 10	—	—	—	
	3-05	1-80	1-35	0-95	1 0	0 5	1-25	1-25	
	3-20	1-90	1-45	1-00	1 2	0 5	1-25	1-25	
	3-40	2-10	1-70	1-15	1 4	0 5	1-50	1-50	
	3-50	2-30	1-85	1-25	1 7	0 5	1-50	1-50	
	3-55	2-30	1-85	1-25	1 7	0 6	2-50	2-50	
	3-65	2-55	2-10	1-45	2 0	0 8	2-50	2-50	
	3-75	2-65	2-20	1-60	2 5	0 8	2-50	2-50	
	4-05	2-85	2-40	1-75	2 5	0 8	3-00	3-00	
	4-40	3-15	2-75	2-15	2 5	0 10	3-00	3-00	
	4-75	3-45	3-00	2-25	2 5	0 11	3-00	3-00	
	4-80	3-55	3-10	2-35	2 5	1 1	3-00	3-00	
	5-35	4-10	3-35	2-55	2 5	1 4	3-00	3-00	
	5-80	4-25	3-50	2-75	2 5	1 7	3-00	3-00	
	5-50	4-25	3-50	2-75	2 5	2 2	5-00	5-00	
	6-40	5-15	4-25	3-50	2 5	2 8	6-00	6-00	
7-50	6-20	5-10	4-30	2 5	4 0	9-00	9-00		
11-25	9-30	7-65	6-45	3 7					

Fractions of less than one halfpenny in the rate to be dropped, and fractions of one halfpenny or over to be charged as one penny.



station accommodation and/or the non-performance by the railway company of terminal services at such siding, but as to this (rebates and rebate allowances) the reader is referred to Chapter XVI.

Incidentally, it may be well to mention that the railway companies' old charging powers (i.e. the Railway Rates and Charges Order Confirmation Acts, 1891 and 1892) entitled them to charge for each company's portion of a *through* journey at a separate scale—that is to say: if traffic originated on the railway of one company and had to be handed over to another company for delivery, each company was allowed to charge at a separate scale for the throughout distance, and by this means, often enough, a "through" rate came to a big figure—but now *through rates are calculated on the continuous mileage basis* in accordance with Sub-section 7 of Section 47 of the Railways Act, 1921, which provides as follows—

For the purpose of calculating the through rate or fare, the standard charge for each portion of the through route shall be that which would have been applicable to such portion had the conveyance for the entire distance of the through route been upon the railway of the company owning such portion, and as if throughout the through route the mileage had been continuously upon one railway, and shall be calculated on the shortest working distance between the two points over the railways of the forwarding companies:

Provided that in such a calculation effect shall be given to any statutory provision whereby a special mileage is allotted in respect of any portion of railway.

### MISCELLANEOUS PROVISIONS AS TO RATES.

The Fifth Schedule to the Railways Act, 1921, contains a number of provisions governing the make-up of railway rates and charges, and these—so far as goods train rates are concerned—follow immediately—

1. In calculating the distance along the railway for the purpose of the charge for conveyance of any merchandise the company shall not include any portion of its railway which may in respect of that merchandise be the subject of a charge for a station terminal.

2. Unless otherwise agreed between the company and the trader, all charges shall, so far as practicable, be based upon the gross weight of the merchandise when received by the company determined according to the imperial avoirdupois weight, but the Rates Tribunal may specify any articles of merchandise upon which the charges may be calculated in reference to cubic capacity, and shall prescribe the method by which the cubic contents for the purpose of charge is to be calculated.

4. Nothing in this Act shall prevent the company from making and receiving, in addition to the charges authorized by this Act, charges

and payments by way of rent or otherwise for sidings or other structural accommodation provided or to be provided for the private use of traders and not required by the company for dealing with the traffic for the purposes of conveyance :

Provided that the amount of such charges or payments shall be fixed by an agreement in writing signed by the trader or by some person duly authorized on his behalf or determined, in case of difference, by the Rates Tribunal.

5. In respect of merchandise received from or delivered to another railway company having a railway of a different gauge, the company may make a reasonable charge for any service of transhipment performed by it, the amount of such charge to be determined in case of difference by the Rates Tribunal.

6. (1) The company may charge for the use of trucks provided by it for the conveyance of merchandise, when the provision of trucks is not included in the rates for conveyance, such sums as the Rates Tribunal determine.

(2) Where, for the conveyance of merchandise other than merchandise in respect of which the rates for conveyance do not include the provision of trucks, the company does not provide trucks, the charge for conveyance shall be reduced by such sum as the Rates Tribunal determine.

(3) The company shall not be required to provide trucks for the conveyance of merchandise in respect of which the provision of trucks is not included in the rate for conveyance, nor for the conveyance of lime in bulk or salt in bulk or any merchandise liable to injure trucks, but in all such cases traders shall be entitled to provide their own trucks :

Provided that any dispute between the company and a trader as to whether any specific kind of merchandise is liable to injure trucks may be referred to the Rates Tribunal, but on any such reference it shall lie on the trader requiring the merchandise to be carried to show that such merchandise will not injure the trucks.

7. Where merchandise is conveyed in a trader's truck, the company shall not make any charge in respect of the return of the truck empty, provided that the truck is returned empty from the consignee and station or siding to whom and to which it was consigned, loaded direct to the consignor and station or siding from whom and whence it was so consigned, and, where a trader forwards an empty truck to any station or siding for the purpose of being loaded with merchandise, the company shall make no charge in respect of the forwarding of such empty truck, provided the truck is returned to it loaded for conveyance direct to the consignor and station or siding from whom and whence it was so forwarded.

8. Subject to the provisions of this Act, any company conveying merchandise on the railway of another company or performing any of the services for which rates or charges are authorized by this Act, shall be entitled to charge and make the same rates and charges as such other company are authorized to make.

9. Nothing in this Act shall affect the right of a company to make any charges which it is authorized by any Act of Parliament to make in respect of any accommodation or services provided or rendered by the company at or in connection with docks or shipping places.



11. (1) A company may charge for the services hereunder mentioned, or any of them when rendered to a trader at his request or for his convenience a reasonable sum—

- (i) Services rendered by the company at or in connection with sidings not belonging to the company in respect of which no rate or charge is otherwise provided ;
- (ii) The collection or delivery outside a terminal station, otherwise than is provided for by section forty-nine of this Act, of merchandise which is to be, or has been, carried by railway ;
- (iii) Weighing merchandise ;
- (iv) The detention of trucks or the use or occupation of any accommodation before or after carriage beyond such period as shall be reasonably necessary for enabling the company to deal with the merchandise as carriers thereof, or the consignor or consignee to give or take delivery thereof ; or, in cases in which the merchandise is consigned to an address other than the terminal station, beyond a reasonable period from the time when notice has been delivered at such address that the merchandise has arrived at the terminal station for delivery and services rendered in connection with such use and occupation ;
- (v) Loading or unloading, covering or uncovering, merchandise in respect of which no charge is provided ;
- (vi) The use of coal drops ;
- (vii) The provision by the company of accommodation at a waterside wharf and special services rendered thereat by the company in respect of loading or unloading merchandise into or out of vessels or barges where no special charge is prescribed by any Act of Parliament, provided that the charge under this subparagraph shall, for the purposes of any disintegration of rate, be deemed to be a dock charge ;
- (viii) Any accommodation or services provided or rendered by the company within the scope of its undertaking, and in respect of which no provisions are made by this Schedule.

(2) Any difference arising under this paragraph shall be determined by the Rates Tribunal at the instance of either party, provided that, where, before any service is rendered, a trader has given notice in writing to the company that he does not require it, the service shall not be deemed to be rendered at the trader's request or for his convenience.

(3) Subject to the provisions of this paragraph, any charge hereunder made by a company in accordance with an order of the Rates Tribunal in force for the time being may be recovered by action in a court of law.

12. The standard rate for conveyance is the rate which the company may charge for the conveyance of merchandise by merchandise train and, subject to the exceptions and provisions specified in this Schedule, includes the provision of locomotive power and trucks by the company and every other expense incidental to such conveyance not otherwise herein provided for.

13. The standard station terminal is the charge which the company may make to a trader for the use of the accommodation (exclusive of coal drops) provided and for the duties undertaken by the company,

for which no provision is made in this Schedule at the terminal station for or in dealing with merchandise as carriers thereof before or after conveyance.

14. The standard service terminals are the charges which the company may make to a trader for the following services when rendered to or for a trader, that is to say, loading, unloading, covering, and uncovering merchandise, which charges shall, in respect of each service, be deemed to include all charges for the provision by the company of labour, machinery, plant, stores and sheets.

15. Where a consignment by merchandise train is over three hundredweight, a fraction of a quarter of a hundredweight may be charged for as a quarter of a hundredweight.

16. For a fraction of a mile the company may charge according to the number of quarters of a mile in that fraction, and a fraction of a quarter of a mile may be charged for as a quarter of a mile.

17. Articles sent in large aggregate quantities, although made up of separate parcels such as bags of sugar, coffee, and the like, shall not be deemed to be small parcels.

18. For any quantity of merchandise less than a truck load which the company either receive or deliver in one truck on or at a siding not belonging to the company, or which from the circumstances in which the merchandise is tendered or the nature of the merchandise the company is obliged or required to carry in one truck, the company may charge as for a reasonable minimum load having regard to the nature of the merchandise.

19. The term "terminal station" means a station or place upon the railway at which a consignment of merchandise is loaded or unloaded before or after conveyance on the railway, but does not include any station or junction at which the merchandise in respect of which any terminal is charged has been exchanged with, handed over to, or received from any railway company, or a junction between the railway and a siding let by or not belonging to the company, or in respect of merchandise passing to or from such siding, any station with which such siding may be connected, or any dock or shipping place the charges for the use of which are regulated by Act of Parliament.

The term "siding" includes branch railways not belonging to a railway company.

20. In this Schedule the word "company" means a railway company with respect to which a schedule of standard charges is in operation, and the word "trader" includes any person sending or receiving or desiring to send or receive merchandise by railway.

## RAILWAY COMPANIES BOUND TO GRANT THROUGH RATES.

If a consignment of traffic is consigned from a station on one railway—say the L.M. & S. Railway—to a station on another railway—the Southern Railway, we will suppose—and there is not a through rate in operation for the conveyance of that particular class of traffic between those two stations, it must necessarily be charged at two "local" rates—at the L.M. & S. Company's local

rate from the sending station to the junction station on the L.M. & S. system where the traffic is to be handed over to the Southern Railway, and at the Southern Company's local rate from that junction station to the delivering station on its own system—and in such an event no fewer than four sets of "station" and "service" terminals would, of course, be paid by the party who was responsible for the carriage charges, and that would obviously be unfair. Consignors of "through" traffic should, therefore, claim through rates for the conveyance of all their through traffic, as this is made possible under Section 47 of the Railways Act, 1921, which provides as follows—

(1) Where on or after the appointed day in pursuance of Section twenty-five of the Railway and Canal Traffic Act, 1888, a railway company or person requires traffic to be forwarded at through rates or fares the company or person shall give written notice of the proposed through rate or fare to each company owning any part of the through route (hereinafter called "the forwarding company") stating both its amount and the route by which the traffic is proposed to be forwarded, and, where a company gives such notice, it shall also state the apportionment of the through rate or fare.

Each forwarding company shall, within ten days or such longer period as the Rates Tribunal prescribe after the receipt of such notice, by written notice inform the company or person requiring the through rate or fare whether it agrees to the rate or fare and the route, and, if it objects to either, the grounds of the objection.

(2) The rate or fare shall come into operation at the expiration of the said ten days or other prescribed period :

Provided that, if before that expiration any such objection as aforesaid has been sent, or if, in the case of a rate, the rate is less than five per cent or more than forty per cent below the combined standard charges of all the forwarding companies, the matter shall be referred to the Rates Tribunal for their decision.

(3) If an objection is made to the granting of the rate or fare or to the route, the Rates Tribunal shall consider whether the granting of the rate or fare is a due and reasonable facility in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate or fare accordingly or fix such other rate or fare as may seem to the Rates Tribunal just and reasonable.

(4) Where upon the application of a railway company or person requiring traffic to be forwarded a through rate or fare is agreed to by the forwarding companies or is made by order of the Rates Tribunal, the apportionment of such through rate or fare, if not agreed upon between the forwarding companies, shall be determined by the Rates Tribunal.

(5) If there is no objection except as to the apportionment of the rate or fare, the rate or fare shall come into operation as provided by Sub-section (2) of this Section in the case where no objection has been

sent by a forwarding company, but the decision of the Rates Tribunal as to its apportionment shall be retrospective ; in any other case the operation of the rate or fare shall be suspended until the decision is given.

(6) In apportioning a through rate or fare between the railway companies concerned the Rates Tribunal shall take all the circumstances into account, including any special charges, fixed allowances, and minimum mileage amounts, which any company may have been entitled to make or receive in respect of the route or any part of the route over which such through rate or fare applies.

(7) For the purpose of calculating the through rate or fare, the standard charge for each portion of the through route shall be that which would have been applicable to such portion had the conveyance for the entire distance of the through route been upon the railway of the company owning such portion, and as if throughout the through route the mileage had been continuously upon one railway, and shall be calculated on the shortest working distance between the two points over the railways of the forwarding companies :

Provided that in such a calculation effect shall be given to any statutory provision whereby a special mileage is allotted in respect of any portion of railway.

(8) The Rates Tribunal shall have power to decide that any proposed through rate or fare is just and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of the through rate or fare than the standard rate or fare which the company is entitled to charge, and to allow and apportion the through rate or fare accordingly.

(9) Where a railway company uses, maintains, or works, or is a party to an arrangement for using, maintaining, or working, vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such vessels and to the traffic carried thereby.

(10) Where part of the through route is over a railway of a light railway company or of a railway company to which no schedule of standard charges applies, or is by sea, this section shall have effect as if the ordinary rate or fare for the time being chargeable for the conveyance of the traffic over that railway or by the sea route were the standard charge.

(11) This section shall not apply where part of the through route is over a canal.

By Sub-section 1 of Section 75 of the same Act it is further provided that—

(1) In order to facilitate the transmission of traffic passing or intended to pass to or from places on or beyond the railway of any amalgamated company from or to places on or beyond the railway of any other amalgamated company, every amalgamated company shall, at all times, afford to any such other amalgamated company all reasonable facilities for the convenient working, forwarding, and conveyance of such traffic via proper and convenient points of exchange, including through rates and fares, the efficient working of trains at suitable and



convenient times so as to satisfy the reasonable requirements of the public for the reception, forwarding, and delivery of such traffic, and shall, so far as circumstances reasonably admit, accommodate, manage, and forward such traffic as effectually, regularly, and expeditiously as if it were its own proper traffic.

Generally speaking, however, it is not necessary to go to the Railway Rates Tribunal to get a through rate fixed, as the railway company which accepts the traffic for conveyance will, as a rule, arrange the matter upon application by the consignor.

### **RAILWAY COMPANIES ALSO BOUND TO QUOTE O.R. RATES.**

The railway companies are also bound to quote rates for the conveyance of traffic at the owner's risk. This is made clear by Sub-sections 2 and 3 of Section 46 of the Railways Act, 1921, which read as follows—

(2) Where an exceptional rate is in operation and the conditions applicable to that rate are the company's risk conditions, or, as the case may be, the owner's risk conditions, and the difference in the company's liability under the two sets of conditions in respect of the merchandise in question is not insignificant, the company shall, on request in writing by a trader, quote a corresponding rate under the other conditions, and, if within twenty-eight days from such request the company fails to quote such a rate to the satisfaction of the trader, the trader may apply to the Rates Tribunal, and the tribunal shall settle such corresponding rate and determine the date as from which it is to come into operation.

(3) The difference between an ordinary rate and an owner's risk rate shall be such as in the opinion of the Rates Tribunal is fairly equivalent to the amount by which the risk of the company in the case of the merchandise in question differs under the two sets of conditions.

### **RAILWAY RATE MAKING IN PRACTICE.**

So much, then, as to the theoretical, or legal, side of the subject; next, as to the practical part.

It has been computed that at least 80 per cent of the rates charged by the railway companies are "exceptional" rates, which means, put shortly, that they have not been arranged strictly in accordance with the standard scales, but (1) to accommodate the traffic, and (2) to ensure, if possible, its passing over the railway line instead of going by another route, e.g. coastwise or by motor. The chief considerations which a railway manager takes into account when fixing a rate are, in fact, these—



1. The quantity of traffic likely to pass between the points concerned ;
2. The frequency with which the consignments will be sent ;
3. The maximum and minimum weight per truck per train ;
4. The liability of the goods to damage ;
5. The value of the goods, and their capacity for " bearing "—railway rates being fixed on the principle of " what the traffic will bear " ; and
6. Competitive routes open to the consignors.

It follows from this that no matter whether it is a special new local or through rate, or a reduction in an existing rate which is required, the applicant should say, as far as he can, how much traffic is likely to pass, in what quantities, and how often a consignment will be sent ; in short, the trader should, for a moment, place himself in the railway manager's position and look at the matter as he—the manager—must look at it. If it can be proved to that gentleman's satisfaction that, unless a reduction in the existing rate is made, no traffic is likely to pass, as the present rate is prohibitive, or that more traffic is likely to pass as a result of the concession, or a like fact can be proved, it is hardly likely that the company will refuse the request if it is possible to grant it. A railway being a business undertaking, obviously the manager thereof is bound to examine and consider every proposal and application from a business point of view. He is compelled to ask himself, if a certain figure is suggested (as it can be), whether that rate will leave his company a reasonable margin of profit.

The success of such an application depends, naturally enough, upon the way it is put and the arguments which are used in support of it, for which very good reasons the letter should contain as much information as possible.

" Fixing a rate," says Mr. W. M. Acworth, " is, in a word, an art, not a science, and it is an art which, in Bagehot's phrase, must be exercised ' in a sort of twilight, . . . in an atmosphere of probabilities and of doubt, where nothing is very clear, where there are some chances for many events, where there is much to be said for several courses, where, nevertheless, one course must be determinedly chosen and fixedly adhered to.' "

## THE REAL BASIS OF RAILWAY RATES, VIZ., WHAT THE TRAFFIC WILL BEAR.

This further quotation from an article by Mr. W. Benns, which appeared in the *Railway News*, of 28 Dec., 1907, adds additional point and interest to the foregoing: "Finding it impracticable to base railway rates with any degree of accuracy on cost of conveyance, and that it would not be to the public interest even if they could, as cost of conveyance bears no relation to the value of the goods carried; and finding that under equal mileage rates cheap and heavy products could not be carried long distances, railways, in the fixing of rates and the classification of goods, have considered the relative value of the service rendered to the public rather than the cost of conveyance to themselves. They have fixed such rates as shall broadly and in the long run pay working expenses and leave a reasonable margin for interest on capital, and at the same time develop the largest amount of traffic, and, in doing this, cost of service has only entered to the extent that the revenue accruing from the rates in the aggregate shall pay working expenses and interest; in other words, the traffic as a whole pays the expenses and interest as a whole, and of that whole each article or class pays such proportion as it is fairly able. There is no rule to which a rate ought to conform; it is impossible to say whether a rate of 2d. or 2½d. per ton per mile is reasonable or otherwise. The fixing of railway rates is, in short, an art and not a science. Commodities in the lower classes pay little more than actual cost of haulage; commodities in the intermediate classes pay actual cost of haulage plus a proportion towards cost of maintenance; commodities in the higher classes pay actual cost of haulage plus a proportion towards cost of maintenance and interest on capital. To give effect to this, railways have charged what the traffic can bear."

## NEW EXCEPTIONAL RATES.

On the subject of new exceptional rates, Section 37 of the Railways Act, 1921, provides that—

(1) On and after the appointed day an amalgamated company or a railway company to which a schedule of standard charges has been applied shall be at liberty to grant new exceptional rates in respect of the carriage of any merchandise, which rates shall within fourteen days, or such longer period as the Minister may allow, be reported to the Minister; so, however, that a new exceptional rate so granted shall not, without

the consent of the Rates Tribunal, be less than five per cent or more than forty per cent below the standard rate chargeable.

(2) If the Minister is of opinion that any company is granting new exceptional rates in such manner as prejudicially to affect any class of users of the railway not benefited by such rates, or so as to jeopardize the realization of the standard revenue of such company, he may refer the matter to the Rates Tribunal, who may, after giving all parties interested an opportunity of being heard, take either or both of the following courses—

- (a) revise the standard charges of that company or any of them :
- (b) cancel or modify all or any of such exceptional rates.

(3) Any trader may, at any time, apply to the Rates Tribunal to fix a new exceptional rate.

Particular attention is drawn to Sub-section 3 of the foregoing Section.

### LOW RATES FOR LARGE QUANTITIES.

This chapter may very well be concluded with reference to two cases tried by the Railway and Canal Commissioners, where application was made for very special rates for large quantities of traffic.

In *Brunner, Mond & Co. v. C.L.C. and L. & N.W. Railway Companies* (XIV R. & C.T.C. 125) an application was made to the Commissioners under Section 25 of the Railway and Canal Traffic Act, 1888, for an order allowing certain proposed through rates for the conveyance of slack from the colliery sidings at Main's, Bamfurlong, and Ince Moss Collieries, all of which were situate at or near Wigan, and which communicated with the railway of the London and North-Western Company to the applicants' private sidings at Winnington, which communicated with the railway of the Cheshire Lines Committee.

In each case the rate proposed was 1s. 2d. per ton to be applicable to slack passing in average quantities of not less than 600 tons per week. There was an existing through rate between the above places of 1s. 11d. per ton for four ton lots and upwards, which was available by any route.

The route proposed by the applicants was in each case some 10 miles shorter than that by which the traffic in question was then ordinarily being conveyed, or approximately 24 miles as compared with 34 miles. The proposed route had been used for this traffic up to within a short time prior to the trial of the application.

The defendant railway companies objected to the proposed rates on the grounds that reasonable through rates already existed

between the said points, that the proposed rates were unduly low, and that the proposed rates and route were not required in the public interest.

All three Commissioners were unanimous in their verdict that the application should be dismissed, and the views of the Court were very well summarized by Sir James Woodhouse, who said: "I also think that this application fails. There appears to me to be two questions involved, one is that of reasonableness and the other is that of public interest. There is no dispute as to the route being a reasonable route. There is no controversy on the part of the applicants as to the rate now existing being a reasonable rate for the traffic which passes under it, and in order to bring their case within the statute they have the duty cast upon them of showing that it is in the public interest. I think that they have not been able to satisfy the Court that it is in the public interest that what they ask should be allowed. Counsel for the applicants admits that he is asking us to exercise what is undoubtedly a novel jurisdiction; that is to say, to impose upon the railway company the duty of making a special bargain for the particular traffic under particular conditions. It is admitted that no case has ever been before the Court in which that jurisdiction has ever been exercised by the Court, and I can find nothing in the statute which entitles us to do that which he asks us to do. But I base the conclusion at which I arrive that this case has failed on the ground stated by my lord, that no evidence has been given on the question of fact that the public interest is sustained in this case. On this ground I think the application should be refused.

The other case was *Marsh v. G.E. Railway Company* (XVII R. & C.T.C. 129). Here the applicant asked for a reduced through rate of 40s. per ton for flax straw in bundles from Clare Station, on the Great Eastern Railway, to Bunford Siding, Yeovil, on the Great Western Railway, this rate to apply to special train loads of not less than forty trucks or to 100 to 120 tons per train load from August to the end of October, 1922. The railway companies offered an experimental rate of 45s. per ton station to station, Clare to Yeovil, exclusive of loading and unloading, with a minimum load of three tons per truck, and a minimum train-trip charge of 17s. 6d. for haulage from Yeovil Station to Bunford Siding, these rates to continue up to 31st December, 1922. The rate of 45s. included the



general  $12\frac{1}{2}$  per cent reduction, which came into force on 1st August, 1922, and a toll of 5s. per ton payable to the North London Railway Co. for running over their railway for a distance of  $11\frac{1}{2}$  miles.

Flax straw of the description proposed to be forwarded was included in Class 3 of the General Classification, and the ordinary station-to-station rate for the transit (199 miles) in this case would have been 88s. 2d., subject to the above reduction of  $12\frac{1}{2}$  per cent. The application, although in form one for a through rate, was treated as an application for a reduced rate under Section 60 of the Railways Act, 1921.

For the applicant it was argued that this would be an experimental rate, and that, as the traffic would pass in full train loads, there would be considerable saving in shunting, marshalling and clerkage, and probably at the points of interchange.

The railway companies contended the rate offered (45s. per ton) was barely remunerative, and that as the rates per ton charged for similar traffic to Yeovil from places within forty or fifty miles of that place were approximately the same as that now offered, they could not charge a lower rate to the applicant.

In delivering the judgment of the Court, Sir F. Gore-Browne, K.C., said: "The two railway companies concerned are the Great Eastern Railway and the Great Western Railway, over whose lines a through rate is asked for. They are prepared to go a long way towards meeting Mr. Marsh, for although the class rate is 88s. 2d. before the reduction which came into force to-day, the railway companies offered a rate of 52s. as before to-day, and as from to-day, when the reduction in railway rates takes effect, the rate of 45s. for the 200 miles from Suffolk to Yeovil. We certainly think that it is a proper case for offering an exceptional rate, but counsel, on behalf of the applicant, presses upon us that 45s. is not low enough, and that it ought to be at most 40s. He presses that partly on account of the very satisfactory arrangements which the applicant is prepared to make for delivering the traffic to the railway companies, and the large amount that is to pass, and, in addition, because it is merely an experimental rate, and may result in the setting up of a big traffic in the future, which it would be worth the while of the railway companies to have established. He tells us that the Great Eastern Co. have been generous in the past in setting up such rates by way of experiment."



“ With regard to the facilities which the trader is ready on this occasion to offer to the companies, those have already been taken into account by the respondents, and they have made a large reduction in offering an exceptional rate of 45s. as compared with the class rate of over 80s. They also tell us that it might be a serious matter for them if they either voluntarily gave a rate below 45s., or if they were called upon by us to do so. They point out that from various places within fifty miles of Yeovil they are already receiving rates, some a trifle below, and some a little above, the rate which they are now offering for the whole distance of 200 miles. In substance, those places in the neighbourhood of Yeovil, situate forty or fifty miles from Yeovil, are paying for the carriage of their flax the Class 3 rate. The offer which the respondents are making to the applicant in this case is only a fraction over the Class ‘ C ’ rate. If it were to be established that the applicant in this case was to get less than the Class ‘ C ’ rate, claims might be put forward by the people whose businesses were situate within fifty miles of Yeovil for a reduction of their own rates to a Class ‘ C ’ rate, or even lower. It may be, or it may not be, that they could establish an undue preference. As to this we express no opinion, but they might come to this Court and say: ‘ If it is fair to grant to Mr. Marsh in Suffolk a rate which is down to the Class ‘ C ’ rate, it must be equally fair to give it to us.’ Therefore the respondents say it may very seriously prejudice them if they have to give the rate in question.

“ Taking all these matters into consideration, we have decided that the railway companies’ offer is sufficient. Mr. Marsh has had a great advantage in bringing these proceedings. He has got a rate of 45s. for the carriage of his flax over 200 miles. We have seen how the rate is made up. It is made up in part by the charges of the Great Eastern Railway, in part by the toll round London, and in part by the amounts received by the Great Western Railway. We have seen that even if you do not take into account the fact that the respondents have to pay out a toll of 5s. to the North London Railway, the amount they receive only works out at 8.18d. per truck mile, and that does not leave them with a very substantial profit, and, indeed, they are inclined to think that it does not give them any profit at all.

“ At the time the application was made there was no offer of 45s.

Accordingly the order will be that the rate shall be the amount offered by the railway companies. Before the order is made I think the two parties ought to arrange between themselves what is the most convenient form of delivery, and then say that the goods if delivered in such and such form shall be carried at 45s. I do not think we need specify the exact quantities."

## CHAPTER XIV

### THE THEORY AND PRACTICE OF RAILWAY RATE MAKING FOR PASSENGER TRAIN TRAFFIC

As was explained in Chapter V, the railway companies are not under any legal obligation to carry general merchandise by their passenger trains ; all that Clause 10 of the Fifth Schedule to the Railways Act, 1921, says is that—

The following provisions and regulations shall be applicable to the conveyance of perishable merchandise by passenger train—

- (a) The company shall afford reasonable facilities for the expeditious conveyance of the articles classified as perishables, either by passenger train or other similar service :
- (b) Such facilities shall be subject to the reasonable regulations of the company for the convenient and punctual working of its passenger train service, and shall not include any obligation to convey perishables by any particular train :
- (c) The company shall not be under obligation to convey by passenger train, or other similar service, any merchandise other than perishables :
- (d) Any question as to the facilities afforded by the company under these provisions and regulations shall be determined by the Rates Tribunal.

Each railway company's Schedule of Standard Charges, however, contains a "General Parcels" scale, and it is at this scale that parcels of general merchandise are, in the absence of specific instructions to the contrary, charged when consigned to be conveyed by passenger train.

### HOW A PASSENGER TRAIN RATE IS BUILT UP.

In each railway company's Schedule of Standard Charges is to be found, of course, the scale of rates applicable to each class of traffic which the companies are compelled to carry by their passenger trains. On page 217, for example, is the L.M. & S. Company's authorized scale of charges for traffics provided for in Section 4 of Part IV of the Railways Act, 1921.

A standard rate for any of the traffics conveyed by passenger train is arrived at in exactly the same way as a goods train rate is calculated, and as explained in the preceding chapter. Thus, to

RATE OF CONVEYANCE—Minimum charge as for 1 cwt.					Station Terminal at each end	Service Terminals	
For the first 10 miles, or any part of such distance	For the next 10 miles, or any part of such distance	For the next 30 miles, or any part of such distance	For the next 50 miles, or any part of such distance	For the remainder of the distance		Loading	Unloading
Per cwt. Per mile <i>d.</i> 0·95	Per cwt. Per mile <i>d.</i> 0·90	Per cwt. Per mile <i>d.</i> 0·65	Per cwt. Per mile <i>d.</i> 0·35	Per cwt. Per mile <i>d.</i> 0·30	Per cwt. <i>d.</i> 1·125	Per cwt. <i>d.</i> 1·125	Per cwt. <i>d.</i> 1·125

Fractions of less than one halfpenny in the rate to be dropped, and fractions of one halfpenny or over to be charged as one penny; fractions of one penny in the total charge per consignment to be charged as one penny.

arrive at the standard rate on butter, for a distance of 100 miles, the calculation must be made in this way—

	<i>s.</i>	<i>d.</i>
Station terminals at the forwarding end . . . . .	.	1·125
Loading . . . . .	.	1·125
Conveyance—		
First 10 miles at 0·95 <i>d.</i> . . . .	.	9·500
Next 10 „ „ 0·90 <i>d.</i> . . . .	.	9·000
Next 30 „ „ 0·65 <i>d.</i> . . . .	1	7·500
Next 50 „ „ 0·35 <i>d.</i> . . . .	1	5·500
Station terminals at the delivery end . . . . .	.	1·125
Unloading . . . . .	.	1·125
STANDARD RATE PER CWT. . . . .	5	0·000

And so on in each and every instance.

## EXCEPTIONAL RATES FOR PASSENGER TRAIN TRAFFIC.

But here again, that is to say, as with goods train traffic so with passenger train traffic, there are exceptional rates in operation for certain traffics, e.g. for goods consigned at the owner's risk, for a few perishable articles chargeable at what is known as the "S" scale, and so on; and these should always be consulted by the consumer of passenger train transport, as by them, in many cases, large economies can be effected.

There is no gainsaying the fact that a great deal of ignorance exists on the subject of passenger train rates—even with those to whose traffic these rates by statute specifically apply. Ask the average trader who deals in perishable goods if he is satisfied that the rates charged to him by the railway companies are within the legal maxima, and he will admit without a blush that he does not

know. He will, as a rule, murmur something about his consignments being always charged at the "Half Rate" scale, and there his knowledge ends. This is not as it should be. No; everyone who forwards goods by railway should know—or, alternatively, should have someone in his employ who knows—precisely how much the railway companies are permitted by law to charge for the conveyance of his goods, so that no more than the proper amount shall be paid for the transport service rendered by the carriers. This is not for one moment to suggest, one hastens to add, that any railway official would deliberately overcharge a trader for the carriage of any consignment—for it would not profit him one farthing piece if he did, nor would such an act be countenanced by any railway manager if he knew of it—but what is meant is just this: that the railway clerks who calculate the carriage charges on outgoing consignments are by no means fully instructed in the science of rate making, and it is quite likely that they may—in fact, and in practice, often do—unwittingly make a mistake, and it is then and from that cause the trader concerned suffers.

### WHAT IS A "PASSENGER TRAIN"?

In this connection it is interesting to recall the decision in a Scottish case wherein the phrase "passenger train or similar service" came up for consideration. The case in question is *Caledonian Railway Company v. Muirhead's Trawlers, Limited*, the facts of which, put shortly, are these: By contract dated 16th February, 1893, between Muirhead's Trawlers, Limited, fish salesmen, and the Caledonian Railway Company, arrangements were made for the carriage of fish from Granton to Glasgow by passenger train at certain reduced rates and at owner's risk. The terms of the contract, which were embodied in a printed form supplied by the railway company, sufficiently appear from the following extract from the form of the consignment note which was in use—

CONSIGNMENT NOTE for Merchandise to be carried by PASSENGER TRAIN at Owner's Risk.

*To the Caledonian Railway Company, Granton Station,  
17th September, 1901—*

Receive and forward the undermentioned merchandise, to be carried at the special or reduced rate below the company's ordinary rate, in consideration whereof I agree to relieve the Caledonian Railway Company, and all other companies or persons over whose lines the



merchandise may pass, or in whose possession the same may be, from all liability for loss, damage, misdelivery, delay or detention, except upon proof that such loss, damage, misdelivery, delay or detention arose from wilful misconduct on the part of the company's servants. And I also agree to the conditions on the back of this note. This agreement shall be deemed to be separately made with all companies or persons parties to any through rate under which the merchandise is carried.

## THE TRADER'S CONTENTION.

The Caledonian Railway Company sued Muirhead's Trawlers, Limited, for £61 4s., being the balance of their account for the carriage of fish. The defendants did not dispute the account, but in defence put forward a counterclaim for loss incurred by the failure of the railway company to carry their fish in time for market. Besides allegations as to fault on the part of the railway company on certain specified occasions, they stated generally that "the railway company did not carry or arrange for the carriage of the fish in dispute by passenger train as stipulated for in the said contracts." Muirhead's Trawlers, Limited, pleaded, *inter alia*, that having sustained loss, injury, and damage through the fault of the railway company, they were entitled to set off the amount thereof against the sum sued for, and in respect thereof to have judgment in their favour; and that the special contracts founded upon by the railway company were not binding upon the defendants in respect that the stipulated mode of carriage by passenger train was not adopted by the pursuers.

## THE JUDGMENT.

On 14th November, 1903, the Lord Ordinary (Low) issued the following judgment: "The facts are these: the railway company run no passenger trains from Granton, and the fish in question was carried by a special fish train which left Granton at an hour in the morning which enabled it to reach Glasgow in time for the fish market there. The fish train was composed of wagons adapted to be run with a passenger train, the engine was a passenger engine, with passenger driver and stoker, and a passenger brake-van with a passenger guard was attached. Upon one of the two occasions which are now in question the fish train appears to have been attached to a passenger train at Slateford, and upon the other occasion, although it was not attached to a passenger train, it was

given the same facilities as if it had been a passenger train. The question is whether in these circumstances the fish train can be regarded as a 'passenger train' in the sense in which that expression is used in the consignment notes? A great deal of light is thrown on that question by the provisions of the Act of Parliament which was passed in 1892 to confirm a Provisional Order made by the Board of Trade fixing the classification of merchandise traffic and the maximum rates to be adopted by the pursuers. The Schedule of maximum rates consists of six parts, and Part V is described as 'containing the rates and charges authorized in respect of perishable merchandise by passenger train, with the provisions and regulations which are to apply to such class of merchandise.' Turning to Part V, I find that the general heading is 'Perishable Merchandise by Passenger Train,' and under that heading there is, in the first place, the 'provisions and regulations applicable to the conveyance of perishable merchandise by passenger train'; in the second place, a specification of perishable merchandise under three divisions; and, in the third place, the maximum rates and charges for these three divisions.

### REASONABLE FACILITIES.

"Now, the first of the provisions and regulations is, that 'the company shall afford reasonable facilities for the expeditious conveyance of the articles enumerated in the three divisions set out hereunder either by passenger train or by other similar service.' In like manner, the third regulation provides that 'the company shall not be under obligation to convey by passenger train, or other similar service, any merchandise other than perishable.' The regulations, therefore, apply not only to passenger trains in the strict sense of the expression, but to 'other similar service,' and I think that it is plain that the maximum rates authorized have a similar application. It therefore seems to me that the expression 'passenger train,' when used in reference to the conveyance of perishable goods, must be construed as including 'other similar service.' Indeed, I think that the statutory regulations which I have quoted amount to an interpretation of the words 'passenger train' when used in reference to the conveyance of perishable merchandise as including 'other similar services,' and accordingly I think that the words when used in the consignment notes in

question must be read as having that meaning. If that is a sound view, there can, I think, be no doubt that the fish train is to be regarded as a service similar to a passenger train. I may add that even if the matter was not so clear as I think it is, the objection could hardly be sustained when taken by the defendants, seeing that they accepted the consignment notes as embodying the contract under which the fish was to be carried, in the knowledge that it was to be sent, and with the intention that it should be sent, by the fish train."

### TRADERS' APPEAL.

The defendants appealed against the decision and argued that a "passenger train" was a train designed to carry passengers, advertised to stop at and start from particular stations at particular times—*Burnett v. Great North of Scotland Railway Company* (1885), 10 App. Cas. 147. The Lord Ordinary's construction of the Act of 1892 did not apply to the consignment notes here in question, which made no reference to "other similar service." It was not denied that defendants' fish had been later for market, and this admission imposed on the railway company an onus, which they had not discharged, to explain the delay—*Scottish Marine Insurance Company v. Turner*, 3rd March, 1853, 1 Macq. 334, Lord Truro, page 340; *Dickson on Evidence*, Sec. 276. Further, the railway company, being in breach of contract, could not rely on the terms of their contract with the defendants, and as common carriers were liable for loss of market—*McConnachie v. Great North of Scotland Railway Company*, 6th November, 1875, 3 R. 79, 13 S.L.R. 39; *Anderson v. North British Railway Company*, 18th February, 1875, 2 R. 443, 12 S.L.R. 312. For the railway company it was argued that they had fulfilled their obligations in all respects. The defendants' definition of "passenger train" could not be supported. The railway company had no powers to run trains for passengers between the termini in question.

### "PASSENGER TRAIN" DEFINED.

Lord Trayner, in delivering judgment, said: "My opinion in this case is that the Lord Ordinary is right both in fact and in law. The terms of the contract between the parties I take to be those expressed in the consignment note, which provides that the goods

are to be carried by 'passenger train at owner's risk.' The Lord Ordinary says that 'passenger train' does not necessarily mean a train that carries passengers, and this the defendants concede, because while the railway company may provide a train which is fitted for passenger traffic and which may convey passengers if they turn up—it cannot find them if they do not come—and therefore a train may be a 'passenger train' though there are no passengers in it. I think a reasonable construction of the words 'passenger train' is this—a train which has all the equipment of a passenger train and all the privileges of a passenger train. If that is the meaning of the contract, as I think it is, the question comes to be whether or not on the two occasions in question the railway company failed to carry it out. On that question, I agree, as I have said, with the Lord Ordinary."

Lord Moncrieff: "I am of the same opinion. I am quite satisfied that the train by which the fish was sent was a 'passenger train' in the sense of the contract, and that being so, the railway company cannot be held liable unless the defendants prove that the loss or detention arose from wilful misconduct on the part of the railway company's servants. On the whole matter I have no hesitation in thinking that the judgment should be affirmed."

Hence the traders had to pay.

## CHAPTER XV

### HOW TO CHECK RAILWAY CHARGES

OF all the accounts which enter a manufacturer's office, a railway carriage account is perhaps the most complicated and, therefore, incomprehensible. One of the smartest accountants that the writer has ever met, a man with a passion for figures, the secretary of a very big concern in the Midlands, paying the railway companies several thousands of pounds per annum for the conveyance of its products, confessed quite frankly that, because of their unintelligibility, his firm's railway accounts were given nothing more than a cursory examination before payment.

There is nothing either unusual or discreditable in that. How can one without any practical railway experience or without any special training in the subject be expected to know the peculiarities of railway accountancy, and where to look for the errors in accounts which are inevitable in this class of clerical work?

#### FIRST CHECK EACH ENTRY.

Now, the first thing to do is to check each entry in the account, to make sure that the consignments on which the carriage is charged were duly received or forwarded as stated. If an "Inwards Goods Journal" has been kept, as recommended in Chapter VII, all that one has to do is to compare the company's statement with that journal to see if it is in order so far as the inwards consignments are concerned. Sometimes it happens that, through an oversight on the part of the accountant, or the indistinct or illegible writing of the invoicing clerk, an item is placed to the wrong account. When such a wrong entry has been made it should be struck out, and the remark "No trace" placed against it. Occasionally, too, when a consignment of goods is received at a station without an invoice, the agent at the receiving station will make up the charges on the parcel from the sending station, and, assuming them to be "to pay," will debit the consignee's account. Hence, it is essential that the consignee should assure himself that he is responsible for the carriage on each particular parcel.

Each "Outwards" entry should be checked, and for the same



reason; these, of course, being compared with the carbon copies of the consignment notes. Now and again the invoicing clerk will make the charges on a parcel "paid," instead of "to pay," as consigned, and when this is done the amount is, of course, wrongly placed to the sender's account. Nor is it a matter of impossibility for the carriage to be charged to both the sender *and* the consignee. This error is due, in most cases, to an indistinct carbon copy of the "way-bill," and the fact that such a thing is possible—that two people can be charged with the same account—makes it imperative that each entry should be carefully checked as suggested.

In this connection the railway companies gave notice on 1st Jan., 1914, to the following effect—

#### CHARGES FOR CARRIAGE REFERRED TO SENDERS FOR PAYMENT

The Railway Companies of the United Kingdom hereby remind Traders and others that, in consequence of the large number of disputes which arise as to whether the Consignee or the Sender is liable for the payment of Carriage Charges, they decline to accept a reference to the Sender for the collection of Carriage Charges in cases where the charges have been properly demanded or advised at the time of delivery.

The Companies hope that the Traders will take measures to prevent any such disputes arising, by making definite arrangements with the Senders as to the payment of the Railway Companies' charges.

It will be observed that it says that the companies will not be referred to senders in cases where the charges have been *properly* demanded, but in practice it frequently transpires that the charges are—for the reasons given above—improperly demanded from the consignees, and in those cases *the companies are acting illegally in withholding delivery of the goods.*

#### —AND THE WEIGHT.

Convincing proof was given in Chapter III (see p. 42) of the fact that the consignee or consignor, whichever pays the carriage on the parcels, should be ever on the alert against overcharges in the weight of consignments. In that chapter it was shown by examples that the difference of 1 lb. often increases the charge considerably. This latter remark must not be interpreted as a hint or suggestion that the companies wilfully defraud the public by charging for more weight than is actually carried; but frequently it happens that, in the

rush to get a train away at the appointed time, a checker will estimate the weight of a consignment if it is not declared by the sender. He—the checker—knows that if he does not get the goods away by that particular train he will be promptly called upon to account for the “unwarrantable delay”; so, anticipating such an event—being between the devil and the deep sea, as it were—he compromises, and to save time estimates the weight—nor is his an under-estimate, you may be sure. Do you blame him? You wouldn’t hesitate to absolve him if you could spend a week behind the scenes at a busy station, say at Paddington, during a rush. No; you would come away assured of his sincerity, and convinced of the necessity for checking the weight shown in your carriage account.

When an overcharge in weight is discovered, the company’s figures should be cancelled, and the correct weight entered underneath in red ink, and the difference in the charge entered opposite, so that the company can see on which consignment the deduction is made.

## NEXT THE RATE.

Everyone who has anything to do with the dispatch and receipt of goods in this manner should provide himself with a rate book of his own, in which he should enter the rates (for those commodities in which his firm deals) in operation between those stations to and from which he receives and sends consignments of merchandise. To compile such a rate book it is a very good plan to go to the station and personally obtain the rates required, and the conditions of conveyance applicable to them; then there is no fear of misquotation. A railway company is bound to allow anyone to inspect its rates books and obtain such information as he requires, for it is provided in Section 54 of the Railways Act, 1921, that—

(1) The schedules of standard charges and the standard terms and conditions of carriage when settled in accordance with the provisions of this Part of this Act, and any orders of the Rates Tribunal modifying standard charges or standard terms and conditions shall be deemed to be statutory rules within the meaning of the Rules Publication Act, 1893, but nothing in this provision shall be construed as making any such schedules or orders statutory rules to which Section 1 of that Act applies.

(2) Printed copies of the general classification of merchandise and schedule of standard charges for the time being in force shall be kept

for sale by every railway company to which the same apply at such places and at such reasonable prices as the Minister may direct.

(3) On and after the appointed day, every railway company shall keep for public inspection at each station at which merchandise is received for conveyance, or, where merchandise is received for conveyance at some other place than a station, then, at the station nearest to such place, a copy of the general classification of merchandise carried on the railway of the company and a book or books stating—

- (i) the chargeable distance from that station or place of every place to which they book ;
- (ii) the scales of standard charges applicable to each class of merchandise conveyed on the railway ;
- (iii) all exceptional rates in operation from such station or place ;
- (iv) any charges in force for the collection and delivery of merchandise at such station or place.

The general classification of merchandise and every such book shall, during all reasonable hours, be open to the inspection of any person without the payment of any fee.<sup>1</sup>

(4) On and after the appointed day, every railway company shall for a period of ten years keep open for inspection at its head office, the books, schedules, or other papers specifying the rates, charges, and conditions of transport in use on the fourteenth day of January, nineteen hundred and twenty, upon the several railways owned or worked by the company, and shall, upon demand and upon payment of a reasonable charge, supply copies of or extracts from such books, schedules, and papers.

(5) Where a railway company carries merchandise partly by land and partly by sea all the books, tables and documents touching the rates of charge of the railway company, which are kept by the railway company at any port in Great Britain used by the vessels which carry the sea traffic of the railway company, shall, besides containing all the rates charged for the sea traffic, state what proportion of any rate is appropriated to the conveyance by sea, distinguishing such proportion from that which is appropriated to the conveyance by land on either side of the sea.

(6) Any company failing to comply with the provisions of this section shall, for each offence and in the case of a continuing offence for every day during which the offence continues, be liable on summary conviction to a fine not exceeding five pounds.<sup>2</sup>

The companies cannot, therefore, legally raise any objection to a traffic manager compiling a rate book of his own for his private use and convenience, and with such a one at hand he can see in a moment whether the rate charged in the account rendered by

<sup>1</sup> A railway company refusing to show the rate books is liable for the costs of proceedings which parties had reasonable and probable cause for taking. (*Clonmel Traders & Ors. v. Waterford & Lim. Rly. Co.*, 4 Railway and Canal Traffic Cases, 92).

<sup>2</sup> A similar penalty is imposed by Section 14 of the Regulation of Railways Act, 1873, and is made recoverable in the same manner as those imposed by the Railways Clauses Consolidation Act, 1845.





## SPECIMEN RAILWAY RATES BOOK.

[illegible]

† The mileage is often required for the purpose of comparing two different rates and the detection of anomalies, and should therefore be carefully noted herein. The railway companies are bound to record the distances in their rate books.

\* Exceptional rates may be entered in these columns, thus :

\* Biscuits  
(Fancy), in  
tins, packed  
in boxes,  
delivered.

\* Flour in  
Sacks,  
minimum 4  
tons per  
truck,  
S to S.

\* Boxwood,  
in lots of  
2 tons and  
upwards.  
S to S.

or as may be required.



the railway company is a correct one or not. The absolute necessity for the adoption of the foregoing suggestion is this: In practice very often the "standard" rate is charged when there is a special low rate in operation, either for large quantities or for goods packed in a particular way; occasionally, too, the wrong class rate is applied to a parcel—it is overlooked by the invoicer that there is, for instance, one rate, the 19th Class, applicable to "fresh meat"; another, the 15th Class, for "preserved meat"; and a third, the 20th Class, for "extract of meat," and so on. So that the traffic manager must, as a matter of necessity—nay, *duty*—ascertain the proper rates to be applied in each case. A book ruled after the style of that shown on the inset will be found useful for recording railway rates. Loose leaf books of this design are, indeed, already on the market.<sup>1</sup>

### THEN THE "RAIL CHARGE."

Errors in calculation are common ones, and to detect these one should procure a railway ready-reckoner, which one can obtain from 4s. upwards. The calculation can, of course, be made in the ordinary way, if desired, but a railway ready-reckoner will be found very useful to the busy man.

The amount shown in this, the rail-charge column, is arrived at in the usual manner—that is to say, it is calculated at the particular rate per ton—if the parcel exceeds 3 cwt.; but parcels not exceeding 3 cwt. in weight are subject to the "Smalls" scale to be found in the "Scales of Standard Charges."

Part V of the Schedule of Standard Rates and Charges, approved by the Railway Rates Tribunal, provides that "for small parcels, not exceeding in weight 3 cwt., by merchandise train, the company may charge, in addition to the authorized conveyance and terminal charges," an additional charge of from 4d. to 10d. per consignment, according to the tonnage rate.

### THE "COLLECTION" CHARGE.

When a railway company collects goods from the consignor's warehouse in London and carts them to the forwarding station for

<sup>1</sup> Alternatively, the reader is referred to the remarkably good series of railway rates books published by the Railway and Shipping Publishing Co., 12 Cherry Street, Birmingham. A special book has been compiled for each big town, and each book contains all the rates in operation from that place.

transmission, it makes a charge for such cartage service at the rates in operation for the time being for the performance of that work.

Or, rather, it charges for cartage at these rates when the tonnage rate does not include a charge for this service.

Some rates are simply station to station rates, familiarly known as "S. to S." rates; some include collection but not delivery, called a "collected" rate; some delivery but not collection, termed a "delivered" rate; whilst many include both collection and delivery, and these are known as "C. and D." rates. Therefore, before passing any item shown in the "Collection" column, one should ascertain by reference to one's rate book whether the charge for the cartage is not already included in the rate.

### THE "PAID ON" CHARGE.

The amount shown in the "Paid on" column (if any) represents the amount which the company has paid out on the parcel by way of cartage to an outside agent, or the like. In case of doubt about any such item—that is to say, if one fails to identify the charge made as "Paid on"—he should ask the company to supply him with a voucher for the amount, giving full particulars, and in all probability this will be forthcoming immediately.

### THE "DELIVERY" CHARGE.

Then there is the delivery charge. This again is calculated at the rates for the time being in operation for the performance of that work, and these vary at certain stations according to circumstances and the nature of the traffic.

The remarks made respecting the "Collection" charge refer also to the "Delivery" charge—i.e. when the tonnage rates include a charge for delivery no extra fee should be shown in the account, though sometimes one will creep in. The thing to be done in such circumstances is too obvious to need mentioning again.

If each item is challenged in this way, the cross additions checked, and the "Total" column cast to be certain that no overcharge occurs there, one may be sure when drawing one's cheque that one is not paying more than the legitimate charge for the carriage of one's goods.

With regard to the notice attached to some railway accounts to

the effect that payment must be made in full and that any irregularity must be adjusted afterwards, having regard to the fact that the duties and obligations of a railway company are very clearly defined and that railway charges are fixed by law, obviously the terms of such a notice cannot be strictly insisted upon.

### ALLOCATING CARRIAGE CHARGES.

Now it is essential for the manufacturer of several different articles to know approximately, if not exactly, what it costs per month and per annum for the conveyance of each of such articles, but, owing to the common practice of the carriers of charging carriage on the gross weight of mixed consignments instead of separately on each class of traffic, and owing also to the even more common practice of manufacturers of sending two or three, or perhaps more classes of goods in one package, these separate carriage charges are not easily ascertainable.

### HOW SEPARATE CARRIAGE CHARGES ARE USUALLY ASCERTAINED.

As a rule, there is a tremendous amount of dissecting and apportioning work involved here. To take a very simple illustration, suppose that a box of cakes, weighing 2 qr. 14 lb. gross, and two boxes of biscuits, weighing 2 cwt. 1 qr. 21 lb. gross, be sent together from Reading to Liverpool; the entry would appear in the railway company's account as follows—

1 box Cakes,	2 qr. 14 lb.	} at 51/9 (" Smalls "
2 boxes Biscuits, 2 cwt. 1 qr. 21 lb.)		
		Scale), 8/7

and to apportion this amount accurately so that the manufacturer would know at the end of the month exactly how much it had cost him during that period for the conveyance of the two different commodities, 1s. 9d. would have to be allocated to the cakes and 6s. 10d. to the biscuits, these amounts being ascertained by simple rule of three.

Again, take a rather more involved, though frequently recurring example. Suppose that three different classes of goods—(say) 1 cwt. of Class 12 goods, 3 qrs. of Class 16 goods, and 2 qr. of Class 18 goods—are sent together in one package—the tare weight of which

is 27 lb.—from London to Leeds ; the railway company, in accordance with the well-established practice already explained, would calculate the carriage at the 18th Class rate (i.e. the rate applicable to the highest class of goods contained in the package) and charge as follows—

1 case mixed goods, 2 cwt. 1 qr. 27 lb.  
at 62/4 (at "Smalls" Scale), 8/8

Then there would arise the necessity for apportioning *the weight of the package*, and the charge, to be accurately allocated, would have to be allotted as follows—

					Cwt.	qrs.	lbs.		s.	d.
Class	12	goods	.	.	1	0	12	.	3	10
"	16	"	.	.		3	9	.	2	11
"	18	"	.	.		2	6	.	1	11
					2	1	27	.	8	8

### A SHORT CUT TO THE SAME END.

All this dissecting work can, however, be avoided in a very simple way, i.e. by taking the average cost per ton for the conveyance of each commodity manufactured (based on the figures for traffic which has already passed) as a standard, and, at the end of each month (or quarter as desired) calculating the total tonnage of each of such commodities sent out during that period at that fixed standard rate per ton so as to arrive at the *approximate* cost of conveyance of each of them. (How to arrive at the *actual* cost is explained later.)

Thus, suppose during the past year your average cost per ton for the conveyance of Commodity A was 20s. per ton, for Commodity B 22s. 6d. per ton, and for Commodity C 25s. per ton, and that during the quarter just closed you sent out 1,000 tons, 500 tons, and 250 tons of these goods respectively, you could tell, by simple multiplication, that your total carriage charges would be (approximately) £1,875.

So—

			£	s.	d.
Commodity A	: 1,000 tons	at 20/-	1,000	0	0
"	B: 500 "	at 22/6	562	10	0
"	C: 250 "	at 25/-	312	10	0
			£1,875	0	0

Between the figures thus arrived at and the amount actually charged by the various carriers who would handle the traffic (and it is assumed that the traffic would go by more than one route, though it does not affect the argument if there is only one carrier concerned), there would undoubtedly be a slight difference one way or the other, and this difference can be accurately allocated by apportioning it according to the figures already arrived at in the above-mentioned manner. For instance, suppose in respect of the above-mentioned three commodities we have a difference of (say) £56 10s. to allocate, we apportion it in this way—

$\frac{20,000 \times 1,130}{37,500}$	(shillings)	=	£	s.	d.
			30	2	8
$\frac{11,250 \times 1,130}{37,500}$	„	=	16	19	0
$\frac{6,250 \times 1,130}{37,500}$	„	=	9	8	4
			£56	10	0

That is, we put the approximate amount of carriage of each commodity over the gross (approximate) amount of carriage of *all* the commodities, and multiply by the amount which has to be allocated, allotting the answer in each instance to the particular commodity concerned. By this means we arrive at the *accurate* carriage charges. For convenience the amount has in each of the above instances been reduced to shillings, but in practice it will be found sufficient to take the nearest pound.

Alternatively, of course, the setting out could be done in this way—

$\frac{£1,000 \times £56.5}{£1,875}$	=	£	s.	d.
		30	2	8
$\frac{£562.5 \times £56.5}{£1,875}$	=	16	19	0
$\frac{£312.5 \times £56.5}{£1,875}$	=	9	8	4
		£56	10	0



In the accompanying table ten different commodities are taken to show the actual detailed working of this method.

If the amount is over-estimated by the first calculation—that is to say, if the amount actually charged by the carriers is *less* than the sum total arrived at by multiplying the standard rates per ton by the weights of the respective commodities—the difference must be treated in exactly the same way, only, of course, the amounts have to be subtracted instead of added as shown above. It is simply a reversion of the process to ascertain the *actual* cost as distinct from the *estimated* cost. But this under-estimation is not likely to occur very often, as conveyance rates have a tendency to go up rather than down.

TABLE SHOWING ALLOCATION OF CHARGES ON A FIXED TONNAGE BASIS

Commodity.	Actual cost per ton in month of September.	Actual tonnage sent out during month of October.				Cost calculated at rate per ton for month of September.			Allocation of difference (assumed to be £100) in proportion to the amounts in the previous column.			Total cost of conveyance of each commodity.		
		Ton.	cwt.	qr.	lb.	£	s.	d.	£	s.	d.	£	s.	d.
A	20/-	1,000				1,000	0	0	30	2	6	1,030	2	6
B	22/6	500				562	10	0	16	19	1	579	9	1
C	25/-	250				312	10	0	9	8	5	321	18	5
D	27/6	200				275	0	0	8	5	7	283	5	7
E	30/-	175				262	10	0	7	18	4	270	8	4
F	32/6	150				243	15	0	7	6	10	251	1	10
G	35/-	125				218	15	0	6	11	10	225	6	10
H	37/6	100				187	10	0	5	13	3	193	3	3
I	40/-	75				150	0	0	4	10	4	154	10	4
J	42/6	50				106	5	0	3	3	10	109	8	10
		2,625				3,318	15	0	100	0	0	3,418	15	0

## A RAILWAY ACCOUNT NOT A MEDIUM FOR SETTLING DISPUTES.

It must here be pointed out that a railway company is not legally bound to give a trader credit, and that if it does allow a ledger account it is on the strict understanding that this shall not be made the medium for settling disputes. In the case of *Skinningrove Iron Co. v. North Eastern Railway Co.* (5 R. & C.C. 244) Sir Frederick Peel said: "The applicants also complain that the railway company do not allow them to pay upon monthly accounts, as they do other firms, but require all traffic to be paid on delivery, and each day's consignment of pig iron to be accompanied with

a remittance. It appears that early in 1882 they began to have a dispute with the railway company about the rate on ironstone from Brotton mines to the Skinningrove Works ; and on the plea that there had been an excess charge of 2d. or 2½d. a ton on the ore, they, in July, 1884, refused to pay in full the sums due by them on their pig iron carriage account, and deducted £1,500 as a set-off for alleged overcharge on Brotton ironstone ; and thereupon (on 14th Aug., 1884) the railway company informed them that their ledger account would at once be closed, and that the usual credit would no longer be continued to them. I think the company were almost forced into taking this step, and that it is not their fault either if credit is still refused. They give credit to accommodate their customers in paying their accounts with them, and if the accommodation is used by their customers to exercise a control over the company's rates of charge which they would not otherwise have, or as a means of postponing payment indefinitely, the company are, in my opinion, justified in withdrawing it altogether."

NOTE.—The undermentioned publications will be found useful when auditing a railway account: *Scales (Nos. 1–14) of Standard Charges for Merchandise by Merchandise Train*. Price 10s. net, from the Railway Clearing House, Euston Square, London. *Scale of Standard Charges of Goods and Minerals*. Price 2s. 6d., post free, from the Railway and Shipping Publishing Co., Birmingham.

## CHAPTER XVI

### REBATES

As was shown in Chapter XIII, a railway tonnage rate is comprised of several different charges for several different services, e.g. for the provision by the company of the railway truck and the station accommodation, for loading the goods and covering them, hauling them along the line, uncovering and unloading them at the other end, and—in most cases—for collecting and delivering the goods.

#### REBATE CLAIMABLE FOR THE NON-PROVISION OF TRUCKS BY RAILWAY COMPANY.

Now, it is very clearly established that if a railway company does not perform a certain service for which it makes a specific charge in the gross tonnage rate, the company is bound to make an allowance to the trader concerned in respect thereof. Thus, Sub-section 2, Section 6, of the Fifth Schedule to the Railways Act, 1921, provides that: "Where, for the conveyance of merchandise other than merchandise in respect of which the rates for conveyance do not include the provision of trucks, the company does not provide trucks, the charge for conveyance shall be reduced by such sum as the Rates Tribunal determine."

While the Railway Rates Tribunal has fixed the following scale of standard charges for the provision of trucks when the company's trucks are used and the standard rate does not include the provision of vehicles—

	<i>s.</i>	<i>d.</i>
For the first 20 miles or any part thereof	.	7 per ton
" " next 30 miles	.	0·15 per ton per mile
" " next 50 miles	.	0·15
" " remainder of distance	.	0·05 " "

But whether or not rebate would be allowed at these rates in any case submitted to the Tribunal would depend, of course, upon the rate charged for the conveyance of the goods which are the subject of the action.

The "rate authorized for conveyance," from which the allowance is to be made under this section, is the rate actually charged and published in the rate book at the time when the particular traffic is carried, and not the maximum rate chargeable. This was decided in *Spillers & Baker v. Great Western Railway Co.* (25 L.T.R. 315).

The amount of the allowance is a pure question of fact to be determined by the arbitrator on the circumstances of each case, but in the case of the *Salt Union Ltd. v. North Staffordshire Railway Co.* (10 R. & C.C. 224), where the difference under this section, which had been referred by the Board of Trade to the Railway Commissioners for decision, was as to the sum by which the rate authorized for the conveyance of salt in bulk by the railway company should be reduced, for distances not exceeding 50 miles, in respect that they did not provide trucks for the same, the Commissioners held that the *quantum* of the rebate is a pure question of fact to be decided by the Commissioners as arbitrators, taking into consideration all the circumstances of the case, and that *prima facie*,

Miles, not exceeding.	Deduction for traders' trucks.	Miles, not exceeding.	Deduction for traders' trucks.
1	1d. per ton.	26	4½d. per ton.
2	1d. "	27	4½d. "
3	1d. "	28	4½d. "
4	1d. "	29	4½d. "
5	1d. "	30	4½d. "
6	1d. "	31	5d. "
7	1½d. "	32	5d. "
8	1½d. "	33	5d. "
9	1½d. "	34	5d. "
10	1½d. "	35	5d. "
11	2d. "	36	5½d. "
12	2d. "	37	5½d. "
13	2d. "	38	5½d. "
14	2d. "	39	5½d. "
15	2d. "	40	5½d. "
16	3d. "	41	6d. "
17	3d. "	42	6d. "
18	3d. "	43	6d. "
19	3½d. "	44	6d. "
20	3½d. "	45	6d. "
21	4d. "	46	6½d. "
22	4d. "	47	6½d. "
23	4d. "	48	6½d. "
24	4d. "	49	6½d. "
25	4d. "	50	6½d. "

where a railway company is not required to provide a trader with trucks, the rebate for a trader's truck should be determined with regard, not to the cost to the trader, but to the sum which the conveyance rate may be deemed to include for the provision of trucks.

Held, further, that the sums by which the rates authorized for the conveyance of the applicants' salt in bulk should be reduced by reason of the railway company not providing the trucks, should be as shown on page 235.

In the case of *Cowdenbeath Coal Co. and Others v. North British Railway Co. and Caledonian Railway Co.* (8 R. & C.C. 251) the differences the Commissioners were asked to decide were—

1. As to the sum to be allowed off the rate charged by the North British Railway Co. for the transmission of coal to its destination, where the coal loaded in trucks belonging to the applicants was conveyed from a North British station to another North British station, other than coal sent for shipment at ports in the County of Fife.

2. As to the amount by which the rates paid by such of the applicants as were coal-masters in the County of Fife, for the conveyance by the North British Railway Co. of coal sent for shipment at ports in the County of Fife, should be reduced by reason of that company not providing the trucks.

The Commissioners held, as to the first of such differences, that the general scale of allowances for traders' wagons should be proportioned to the rates, and not to mileage, and should not cease at any fixed point, and that the sums by which the rates charged by the North British Railway Co. to the applicants for the conveyance of their coal (other than coal sent for shipment at ports in the County of Fife) should be reduced by reason of the railway company not providing the trucks and should be as shown on page 237, and that where the total charge in railway company's trucks was more than 2s. 8d. per ton, the deduction for traders' trucks should increase by one-eighth of a penny for every penny of additional charge up to and including a charge of 4s., and by one-sixteenth of a penny for every penny of charge beyond 4s.



Total Charge in Railway Company's Trucks.			Deduction for Trader's Trucks.		
s.	d.		d.		
0	3½	per ton.	1½	per ton.	
0	4½	"	1½	"	
0	5½	"	2	"	
0	6½	"	2	"	
0	7½	"	2	"	
0	8½	"	2	"	
0	9½	"	2	"	
0	10	"	2	"	
1	0	"	2½	"	
1	2	"	2½	"	
1	3	"	2½	"	
1	4	"	3	"	
1	5	"	3½	"	
1	6	"	3½	"	
1	7	"	3½	"	
1	8	"	4	"	
1	9	"	4½	"	
1	10	"	4½	"	
1	11	"	4½	"	
2	0	"	5	"	
2	1½	"	5½	"	
2	3	"	5½	"	
2	4½	"	5½	"	
2	6	"	5½	"	
2	6½	"	5½	"	
2	7	"	5½	"	
2	7½	"	5½	"	
2	8	"	6	"	

### —FOR THE NON-PROVISION OF STATION ACCOMMODATION.

Section 2, Fifth Schedule, of the Railways Act, 1921, provides that: "Where merchandise conveyed in a separate truck is loaded or unloaded elsewhere than in a shed or building of the company, the company may not charge to a trader any service terminal for the performance by the company of any of the said services if the trader has requested the company to allow him to perform the service for himself, and the company has unreasonably refused to allow him to do so. Any dispute between a trader and the company in reference to any service terminal charged to a trader who is not allowed by the company to perform for himself the service shall be determined by the Rates Tribunal." And Section 4 of the Railway and Canal Traffic Act, 1894, provides that :

"Whenever merchandise is received or delivered by a railway company at any siding or branch railway not belonging to the company, and a dispute arises between the railway company and the consignor or consignee of such merchandise as to any allowance or rebate to be made from the rates charged to such consignor or consignee in respect that the railway company does not provide station accommodation or perform terminal services, the Railway and Canal Traffic Commissioners shall have jurisdiction to hear and determine such dispute, and to determine what, if any, is a reasonable and just allowance or rebate."

In the case of *Pidcock & Co. v. Manchester, Sheffield and Lincolnshire Railway Co.* (9 R. & C.C. 45) the applicants were the owners of a siding which communicated with the railway of the defendants at a point situated about thirty or forty yards from the Retford Goods Station of the defendants. A dispute arose between the applicants and the defendants as to the allowance or rebate to be made from the rates charged to the applicants in respect that the defendants did not provide station accommodation or perform terminal services for the applicants' malt and barley traffic, received or delivered by the defendants at such siding.

The railway company contended that the above section applies only where the railway company "does not provide any station accommodation or perform any terminal services," and has no reference to a case where the railway company is able to prove that it has afforded any station accommodation or performed any terminal services, however slight.

The Commissioners held, that the section gives a rebate "in respect that"; that is, in proportion as or to the extent the railway company does not provide station accommodation or perform terminal services, and that the jurisdiction of the Railway Commissioners is not ousted on proof of the fact that one terminal service, e.g. covering, is performed by the railway company.

Held, further, that, as by Sections 3 and 26 of the defendants' Order Confirmation Act, 1892, Retford was not a "terminal station," the railway company was not entitled to charge to the applicants a station terminal at Retford station in respect of their malt or barley traffic passing from or to the siding of the applicants connected with the Retford station; and the Commissioners laid it down that the amount of terminal charges to be deducted is

deemed to be in the same proportion to the rates actually charged as they would be to the sum of the maximum rates.

In *Vickers, Son & Maxim, Ltd. v. Midland Railway Co. and Others* (11 R. & C.C. 249), Wright, J., in this case said: "That the method of ascertaining the amount of the terminals by assuming them to be in the same proportion to the rates actually charged as the maximum terminals would be to the amount of the maximum sums chargeable for conveyance and terminals, or what is known as the 'Pidcock' rule, could not be adopted as a general rule, since it would necessarily be wrong whenever the cost and value of the terminal accommodation and services were very low or very high as compared with the cost of conveyance. A preferable method would sometimes be to refer to the station terminal any excess over the maximum conveyance rate."

In *Manchester, Sheffield and Lincolnshire Railway Co. v. Pidcock & Co.* (10 R. & C.C. 151) it was held that the railway company being relieved, by the provision by the applicants of their own siding, from the expense of finding standing room for trucks and space for loading and unloading, three-fourths of the sum which it charged as a station terminal at its Retford station, in respect of merchandise similar to the respondents' and liable to such terminal charge, was a reasonable sum to be charged to the respondents for services rendered by the railway company at or in connection with the respondents' siding at Retford.

Where an allowance is granted by the Court under Section 4 of the Railway and Canal Traffic Act, 1894, the allowance *prima facie* should begin from the date of the "application," and not from the date of the judgment, nor from a time anterior to the application. (*Gilstrap, Earp & Co. v. Great Northern Railway Co. and Midland Railway Co.*; 11 R. & C.C. 265.) But in the case of *Simmonds & Co. v. Great Northern Railway Co.* (11 R. & C.C. 226), heard at the Royal Courts of Justice, London, on 22nd November, 1900, Mr. Justice Wright, in giving judgment, said: "I am very far from saying that there may not be cases in which a retrospective claim for damages may not be made out by an applicant under the 4th section of the Railway and Canal Traffic Act, 1894, which appears to be a section giving or restoring jurisdiction, and not creating new subjects of jurisdiction. It creates a new subject of jurisdiction in so far as it provides for our discretion in granting

a rebate, and in cases of that kind I should think probably damages could not be given for anything except disobedience to our order ; but the jurisdiction given by the section extends to other matters besides—to matters of allowance in respect of the non-performance of services which may not depend upon our discretion at all. I should think there is probably jurisdiction to award damages under the 12th section of the Railway and Canal Traffic Act, 1888, as well as under any other section ; at any rate, I should be very slow to decide there was no power to award damages under that section."

#### —AND FOR THE NON-PERFORMANCE OF THE CARTAGE.

Section 11, Fifth Schedule, to the Railways Act, 1921, empowers " a railway company to charge a reasonable sum " for " the collection or delivery (of merchandise) outside the terminal station " . . . " provided that where, before any service is rendered to a trader, he has given notice in writing to the company that he does not require it, the service shall not be deemed to have been rendered at the trader's request or for his convenience."

The first important cartage rebate case was that of *Menzies v. The Caledonian Railway Co.* (5 R. & C.C. 306), the facts of which are these.

A railway company carried traffic from A station at collection and delivery rates, and appointed an agent to perform the service of carting to the station for them. The applicant, a carrier, also carted to the A station goods for which the railway company charged collection and delivery rates. The company refused to pay applicants anything at all in respect of such cartage.

The Commissioners held that if the railway company chose to protect itself by charging only the rate, less the fair allowance for collection, it could do so ; but if the goods were carried and charged for at a collection and delivery rate it was bound to pay a reasonable sum to the person who had performed the collecting service.

The Commissioners ordered the railway company to pay to the applicant the sum of 10d. per ton in respect of the service so performed, this being the amount which it paid to its own agent for the service of actual cartage. In delivering judgment, Mr. Commissioner Miller said : " If they (the railway company) are

conducting a service, which as a railway company they are not called upon to do, namely, that of carriers by road, they are not entitled so to mix up their charge for that service with their charge as carriers by rail that other persons who choose to do the road service for themselves are subjected to any disadvantage. Therefore, if instead of making (as, in my opinion, it would be a reasonable and prudent thing for every railway company to make) a set of station-to-station rates, with specific additions for collection and delivery respectively, and charging accordingly, they choose to make one general rate which includes collection and delivery, they must, in case they do not collect, or in case they do not deliver, make a proper and reasonable abatement."

The amount claimable as rebate in respect of goods charged at full class rates is the amount charged by the railway company for either collection or delivery of that particular class of ordinary "C and D" traffic at that particular station.

When, however, the goods are carried at special, or "exceptional" rates, other considerations arise. Thus, in *Pickfords, Ltd. v. London and North Western Railway Co.* (13 R. & C.C. 31) the applicants, who were carriers in London and other towns, collected goods intended for conveyance on the defendants' railway and delivered the same, thereby competing with the defendants, who also carted goods to and from their stations in London and in such other towns. The rates charged by the railway company in some cases were the statutory class rates, and in other cases "special" rates, or less than the statutory maximum, and in many instances included charges for collection and delivery. Where collected and delivered rates were charged, and the collection and delivery or either were in fact performed by the applicants, they became entitled to rebates in respect of such services performed by them. The applicants complained that these rebates, especially in the cases of goods carried at "special" rates, were insufficient and unduly low, and that the railway company thereby unduly preferred themselves. But the Court held that the rebate off a collected and delivered rate, more especially off a "special" collected and delivered rate, was not necessarily equivalent to the sum charged by the railway company in addition to the station-to-station rate where collection and delivery were performed by the railway company.



In delivering judgment, Mr. Justice Bigham said: "Cartage stands on a different footing from conveyance on the railway. It is a service which the company may perform or not, as they please; it is a service of which the trader using the railway may avail himself or not, as he pleases; and it is a service for which no statutory limit of charge is fixed; it must be reasonable, that is all.

"A cartage charge is levied by the company in one of two ways; either it is levied as a separate sum added to a station-to-station rate, or it is levied as part of an inclusive rate. In the former case no question of rebate arises: the trader who does his own carting merely pays the station-to-station rate; but in the latter case, where the rate includes the cartage, the question of rebate does arise, and the trader is entitled to an 'abatement' of the inclusive rate corresponding with the cartage service which he does not avail himself of. It has been said, and often repeated, that the proper measure of this rebate is the amount of the 'charge' made in the exclusive rate for cartage. But, for my own part, I think this statement introduces confusion. In the first place, it is not true to say that there is any 'charge' in an inclusive rate for cartage. The inclusive rate, no doubt, is fixed at a sum which is thought will cover the cost of cartage plus conveyance rate and terminals, and will leave a profit, but in no other sense is a 'charge' made for cartage in an inclusive rate.

"The measure of rebate is probably the bare cost saved."

The amount of rebate claimable in respect of goods charged and carried at "exceptional" rates can, however, always be ascertained on application to the station-master at the particular station where the rebate is allowable.

## WHO SHOULD CLAIM AND HOW.

The railway companies never question the right of the consignee to claim the rebate on inwards traffic, but they do occasionally challenge the right of the consignor or his agent to claim an allowance on outwards traffic, more especially if the carriage is paid by the consignee. In the case of *Menzies v. The Caledonian Railway Co.* (5 R. & C.C. 306) Sir Frederick Peel said: "The railway company charge and are paid a rate which includes the price of carting. They do not cart themselves, and they refuse to pay the

person who does the service, and they say that they will deal only with the sender of the traffic. Now it does not seem to me that the sender of the traffic is the proper person for the company to deal with, at least, not in preference to the actual carrier of the goods. It might be so if the applicant is to be regarded as the mere servant of the sender, but it does not appear to me that that is the relation in which he stands to the sender. He is a man who is willing to carry to the station the goods of any person who employs him for that purpose. I do not see that he is more the servant of the sender who employs him to take goods to the station than a railway company would be the servant of the sender who employed the company to take his goods to the end of their journey or to their destination. The railway company accept the goods from this man, and they have no objection to pay him what he charges where they receive what they paid him as a paid on, but they refuse to pay him anything where they receive the price of the cartage as part of their railway rate. I see no sufficient reason for making that distinction, and therefore I think that in making that distinction they subject him to an undue disadvantage."

In *Greig v. Caledonian and North British Railway Co.* (*World's Carriers*, Dec., 1908) the plaintiff, a waste merchant of Arbroath, took action against the Caledonian and North British Railway Co's. as joint owners of the Dundee and Arbroath Joint Railway, for payment of £26 16s. 1d., paid by him to a carting contractor in Arbroath for the carriage of goods from his warehouse to Arbroath Goods Station.

The defence was that the carriage of the goods from Arbroath to Dundee was not paid by Greig but by the consignees in Dundee, and that Greig had no claim on defendants; that the companies were entitled to charge a rate which included cartage, and had power to exact this rate whether the cartages were performed or not, until a trader intimated to them that he was to do his own cartage, and that by statute the matter in dispute fell to be referred to an arbitrator to be appointed by the Board of Trade. Plaintiff admitted on record that the carriage had been paid by the consignees, and that he had given no notice to the companies that he was to do his own cartages, averring that this was not necessary in the circumstances.

The Court held that Greig, as the consignor, was, under the contract, liable to the companies for the carriage if they failed to get payment from the consignees, and that the latter were, therefore, his agents in a question as between him and the defendants. It was held, further, that the defendants, having got payment from the consignees of through rates, which included a charge for cartages performed by the plaintiff, the latter was entitled to repayment from the companies. It was also found that, under their statute, the defendants were not entitled to exact cartage rates unless they actually did the cartage themselves.

With regard to the defendants' contention that the matter in dispute should have been referred to a Board of Trade arbitrator, under Section 5 of the Railway Rates and Charges Act, 1892, the Sheriff held that this section applied only to a case where it was a question of the reasonableness of the rates, or of whether the service in dispute had been rendered to a trader at his request or for his convenience. His Lordship decided accordingly, that the railway companies, having, in fact, not done this cartage, there was no room for this section applying, and repelled the defendants' contention. He also held that the defendants' averment as to the effect of the statutory provision as to the publication of their rates under Section 14 of the Railway and Canal Traffic Act, 1893, was totally irrelevant, and that this Act was meant for the protection of traders, and accordingly it was no bar to the right of the plaintiff to insist on his present claim.

A claim for rebate, like a claim for damage or loss during transit, should be submitted in detail, and forms ruled after the style of those shown on the next page will be found convenient for this purpose.

#### **NO REBATE CLAIMABLE ON PARCEL TRAFFIC.**

Rebate cannot, however, be claimed on parcels conveyed by passenger train—even though they may have been charged at a "C and D" rate. The railway companies are not, in fact, under any statutory obligation to carry general merchandise by their passenger trains—all that the law provides is that they shall "afford reasonable facilities" for the expeditious conveyance of certain perishable articles "either by passenger train or by other similar service." (*See Chap. V, p. 69.*) And such being the case, of

INWARDS GOODS.

RAILWAY

Date.	From.	Number and Description of Packages.	Marks.	TONNAGES CARRIED AT EXCEPTIONAL RATES.							
				Rate applicable.	Rate applicable.	Rate applicable.	Rate applicable.	Rate applicable.	Rate applicable.		
				T.	c.	qr.	lb.	T.	c.	qr.	lb.

OUTWARDS GOODS.

RAILWAY.

[illegible]

course, the companies are in a position to make their own terms for the conveyance of any other class of goods than those named, and one of such terms is that neither the sender nor the consignee shall be entitled to any rebate.

In *Stone v. Midland Railway Co.* (1904 1 K.B. 669) the company announced to the public its willingness to carry tailor's clothing by passenger train at a "collected and delivered" rate specified in a scale of charges which it published. The plaintiffs, who were common carriers at Bristol, sent parcels of tailor's clothing from Bristol to Southampton by the company's passenger train, having themselves collected the goods at Bristol and handed them over to the company at its passenger station. The plaintiffs paid to the company, under protest, the scale charge; and brought an action against it for money had and received, claiming to be entitled to a rebate from the defendants in respect of the collection of the goods at Bristol. It was held by the Court of Appeal that, as the company was under no statutory obligation to carry the goods by passenger train, the plaintiffs were not entitled to any rebate. Lord Justice Collins, Master of the Rolls, said: "We arrive, then, at this state of things—that the company is under no obligation to carry non-perishable merchandise by passenger train, that there is no tariff fixed for such carriage, and no obligation to make a tariff. The merchandise in this case was non-perishable, and, while under no obligation to carry it by passenger train, the company have announced that they are prepared to take it from the house of the sender and deliver it at its destination at a certain rate. If that rate were to be analysed, it might very probably be found to include an element representing the cost of collection and delivery; but the company say that they are willing to afford a certain facility to any one who chooses to take it, but only on payment of an inclusive rate which, it may be taken, includes a charge for collection. The plaintiffs say that they do the collection and then hand over the goods at the defendants' station, and therefore ought not to be charged for collection, and insist on what is in effect a station-to-station rate. If the senders of goods had a right to such a rate the matter would stand on a different footing; but they have no such right. The plaintiffs cannot claim to insist upon facilities being given for the transit of their goods by passenger train, and it is, therefore, obvious that



they cannot complain that the company refuse to give them a station-to-station rate."

\* \* \* \* \*

NOTE.—All the leading rebate test cases have been collected together by the present writer and published in one volume, entitled *Railway Rebate Case Law*, by Sir Isaac Pitman & Sons, Ltd., price 10s. 6d. net.

## CHAPTER XVII

### UNDUE PREFERENCE

By Section 2 of the Railway and Canal Traffic Act, 1854, it is provided that: "Every railway company . . . shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways . . . and no such company shall make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company or particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, . . . and every railway company . . . shall afford all due and reasonable facilities for receiving and forwarding the traffic . . . without any unreasonable delay and without any such preference or advantage, or prejudice or disadvantage as aforesaid." But, notwithstanding this provision, a railway company will sometimes create or give an undue preference in favour of one trader, to the disadvantage of his competitor, by performing some additional service, or by giving a special or secret rebate, or the like.

### WHAT CONSTITUTES UNDUE PREFERENCE.

It is impossible to say precisely what constitutes undue preference, so that a violation of the above-mentioned decree can be detected at a glance: obviously each case must be decided on its merits; but the following digest of the leading cases will prove instructive on the point.

In *Evershed v. London and North Western Railway Co.* (3 A.C. 1029) the plaintiff was a brewer at the town of Burton, where three railways had their stations. With one of these, the Midland Railway, certain brewers in the town had direct communication by sidings, which enabled goods to be sent to the trains, and taken from the trains of the said railway, with greater ease and less loss of time than by way of ordinary cartage. The Midland Railway Co. charged them nothing for cartage and made a rebate in the

charge for station-to-station conveyance. These brewers had no such communications with the London and North Western Railway Co., but it was often convenient for them to send by that railway ; and the Directors of that railway, in order to compete with the Midland Railway, allowed these particular brewers the same advantages as to cartage and rebate as the Midland Railway did. As to all others in the same trade (Evershed among the rest), the Directors of the London and North Western Railway made the ordinary charge for cartage, and allowed no rebate on the charge for conveyance on the line. It was held that this was an inequality and an undue preference within the meaning of the statutes. Where Evershed, one of the persons thus paying the higher rate, had for some time paid it in ignorance of the facts, but afterwards, on finding that he was subjected to this higher charge, paid it under protest, it was held that he was entitled to recover back, in an action for money had and received, the difference he had so paid under protest. In delivering judgment, Lord Cairns said that the clear and undoubted right of a public trader is to see that he is receiving from a railway company equal treatment with other traders of the same kind doing the same business and supplying the same traffic. In the same case, Lord Blackburn pointed out that what the Legislature had clearly said is that tolls must be charged equally to all persons under the same circumstances, that is, under the same circumstances as to the goods, not as to the person, and that the person did not come into the question at all.

In *Skinningrove Iron Co. v. North Eastern Railway Co.* (5 R. & C.C. 244) where the rates to two ironworks, situated respectively 26 and 35 miles from the market to which the traffic of each was sent, were respectively 2s. 8d. and 2s. 9d., so that the railway company carried the extra distance to the further of these at the rate of one-tenth of a penny per ton per mile, or a sum insufficient to pay the cost of earning the difference in the two rates, and where the only reason given for the smaller charge to the further works was that a low rate was necessary to enable these works to compete with the works nearer to the market, the Court held that that constituted an undue prejudice to the owners of the nearer works, and an undue preference to the owners of the farther works.

The case of *The Rhymney Iron Co. Ltd. v. The Rhymney Railway Co.* (6 R. & C.C. 60) decided that an agreement between one trader and a railway company which secures to the trader rates unequal when compared with those of another trader having similar traffic which is carried by the railway company to the same place is *prima facie* an undue preference, and the circumstance that the railway company has offered the same agreement as to the rates and rebates to the competing trader will not necessarily justify the inequality.

In *The Distington Iron Co., Ltd. v. London and North Western Railway Co.* (6 R. & C.C. 108) it was held that a railway company insisting upon the prepayment of rates in excess of those authorized by Parliament and threatening to cease carrying the traffic if they are not prepaid, subjected the customer to an undue disadvantage. An overcharge, even where it is not alleged that other traders are unduly preferred, or that the persons overcharged are subjected to any prejudice or disadvantage other than the necessity of paying the illegal rates is, if the legal amount has been tendered and refused, or if the railway company has threatened to prevent or obstruct the traffic except upon prepayment, a denial of reasonable facilities and a violation of Section 2 of the Railway and Canal Traffic Act, 1854. It was so held by the Railway Commissioners.

Again, in the *Aberdeen Commercial Co. v. Great North of Scotland Railway Co.* (3 R. & C.C. 205) it was held that a railway company, if it makes illegal or excessive charges for the conveyance of traffic, does not afford all reasonable facilities within the meaning of Section 2 of the Railway and Canal Traffic Act, 1854, and that a railway company, if it makes illegal or excessive charges for the conveyance of traffic, subjects such traffic to undue prejudice within the meaning of Section 2 of the Railway and Canal Traffic Act, 1854.

Whether a railway company carries as common carriers or in any other capacity, it is equally bound not to exceed, except as expressly empowered, the authorized scale of tolls.

In *Harris v. Cockermouth Railway Co.* (27 L.J.C.P. 162) a railway company was threatened by the owner of extensive collieries, which he had, at considerable expense, connected with its line, that, unless it agreed to carry his coals to W., the terminus of its line, at a certain rate, he would construct a tramway

from his collieries to W., and so divert his coal traffic from its line altogether. The company entered into an agreement with him accordingly, under which it carried his coals at such rate, being a less rate than that which was charged to the proprietors of other collieries situated in the same district for the carriage of their coal over the same portion of the line. It was held that this was an undue preference.

In *Forwood v. Great Northern Railway Co.* (12 R. & C.C. 89) a complaint was made by wharf owners that a railway company had allowed, or paid, to the dock company the sum of 3s. 9d. per ton for dues, and for services rendered by the dock company between the dock entrance and the ship's side, in respect of merchandise in bales carried by the railway company from Manchester to London, for shipment from the docks, at a collected and delivered rate of 25s. per ton (which rate included, as between the consignee and the railway company, delivery at the ship's side), and had refused to make any allowance to the wharf-owners for similar services rendered by them in respect of similar merchandise carried by the railway company at the same rate for shipment from the wharf. It was held, that the applicants were prejudiced, and had sufficient interest as competing wharf-owners to entitle them to apply to the Court for relief; and that the railway company had unduly preferred the dock company in granting to the dock company an allowance of 3s. 9d. per ton, while they refused any allowance to the applicants for similar services; but that, the applicants' traffic being worked at a greater cost to the railway company than the traffic of the dock company, an allowance of 1s. 9d. per ton was, in the applicants' case, a fair proportion of the 25s. rate for the services performed at their wharf.

Upon a complaint by traders (*Watkinson v. Wrexham, Mold and Connah's Quay Railway Co.*; 3 R. & C.C. 446) whose collieries and brickworks were connected by sidings with the respondents' railway, that the respondents did not duly and properly work and manage their railway, and did not provide sufficient locomotive power for that purpose, and that they improperly and unnecessarily detained empty wagons destined for the collieries and works of the applicants, and failed to haul away with regularity and dispatch from the sidings connecting the said works and collieries with the railway, loaded wagons placed ready for removal; the



Commissioners held that the respondents did not, according to their powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from their railway, and for the return of carriages and trucks ; and the Commissioners ordered the respondents to work and manage their railway duly and properly, and to provide sufficient locomotive power and labour for that purpose, and to desist from unduly detaining empty or unloaded wagons destined for the collieries and works of the applicants, and to haul away with regularity and dispatch from the sidings communicating with their railway loaded wagons properly placed ready for removal.

No difference must be made in the treatment of home and foreign merchandise in respect of the same or similar services. Section 27 of the Railway and Canal Traffic Act, 1888, does not prohibit all inequalities in rates as between home and foreign merchandise, and if the railway company can prove facts which would justify a difference in rates if the goods in question were in both cases home goods, the company is not debarred from relying on those facts as an answer to justify such difference merely because the goods which receive the benefit of the difference are of foreign origin. The difference referred to is one which the foreign goods obtain solely owing to their foreign origin, and which is, therefore, of necessity not open to the home goods. Therefore, a difference founded on a long distance through rate from a foreign country with a proportionately lower mileage rate over the British railway part of the journey, or possibly a difference due to the fact that ocean steamship competition exists, cannot be justified because in each case the difference is due to circumstances which are to be found in the case of the foreign goods but not in the case of the home goods. (*Mansion House Association v. London and South Western Railway Co.* ; 1895, 1 Q.B. 927.)

## HOW UNDUE PREFERENCE MAY BE DISCOVERED.

Seeing that the very nature of undue preference itself varies, it is obviously impossible to lay down any hard and fast rule for the discovery of its existence. Sometimes, as we have seen, it takes the shape of a secret rebate ; another time it will be in the form of an additional service for the same figure, or a lower rate for the same or similar services ; or it may be the refusal of a certain

facility which is known to be granted to a competitor in the trade. But in every case a close investigation of all the existing circumstances is essential—that is to say, the circumstances surrounding one's own and one's competitor's traffic which, in turn, invariably involves a minute examination of the company's rates books at both stations, e.g. the local goods station and the station where the competing traffic is put on rail—and in almost every case a disintegration of the comparative rates is absolutely necessary. As a rule, it is only by closely watching the whole procedure—noting what services are actually performed in each instance and getting the rates carefully analysed—that inequalities can be detected.

As we have already seen (in Chapter XV) a trader is entitled to go to any railway station and ascertain for himself what rates there are in operation from that point, it being provided by Section 54 of the Railways Act, 1921, that the railway companies must keep all their rate books open for the inspection of the general public.

### HOW UNDUE PREFERENCE CAN BE REMOVED.

First of all, Section 27 of the Railway and Canal Traffic Act, 1888, provides as follows—

1. Whenever it is shown that any railway company charge one trader or class of traders, or the traders in any district, lower tolls, rates, or charges for the same or similar merchandise, or lower tolls, rates, or charges for the same or similar services, than they charge to other traders, or classes of traders, or to the traders in another district, or make any difference in treatment in respect of any such trader or traders, the burden of proving that such lower charge or difference in treatment does not amount to an undue preference shall lie on the railway company.

2. In deciding whether a lower charge or difference in treatment does or does not amount to undue preference, the Court having jurisdiction in the matter, or the Commissioners, as the case may be, may, so far as they think reasonable, in addition to any other considerations affecting the case, take into such consideration whether such lower charge or difference in treatment is necessary for the purpose of securing in the interests of the public the traffic in respect of which it is made, and whether the inequality cannot

be removed without unduly reducing the rates charged to the complainant: Provided that no railway company shall make, nor shall the Court, or the Commissioners, sanction any difference in the tolls, rates, or charges made for, or any difference in the treatment of, home and foreign merchandise, in respect of the same or similar services.

3. The Court or the Commissioners shall have power to direct that no higher charge shall be made to any person for services in respect of merchandise carried over a less distance than is made to any other person for similar services in respect of the like description and quantity of merchandise carried over a greater distance on the same line of railway.

While Sub-section 5, Section 40, of the Railways Act, 1921, further provides that—

For the purpose of determining any question of an alleged undue or unreasonable preference or advantage, the Railway and Canal Commission shall not have regard to the separate component parts of any rate as shown in the rate book or as determined by this section, but shall, unless in any case in which an application has been made for the purpose it is proved to the satisfaction of the Commission that a consideration of the component parts of the rate would be fair and reasonable, determine the question in reference to the total rate for carriage applicable to the merchandise in respect of which such undue or unreasonable preference or advantage is alleged to arise and the conditions under which the rate applies.

It will therefore be seen the Railway and Canal Commissioners are the final arbiters in this matter of undue preference, and it is they to whom a case of this kind should be referred without delay.

Finally, by Section 50 of the Railway and Canal Traffic Act, 1888, it is provided that: "In any proceedings under this Act any party may appear before the Commissioners either by himself in person or by counsel or solicitor." But it is inadvisable for the average trader to pit himself against the array of counsel which invariably appears on behalf of a railway company in cases of this kind. The better—and usual—plan is for the trader to get the matter taken up on his behalf by his trade association, which is made possible by Section 7 of the Railway and Canal Traffic Act, 1888, which decrees that any association of traders may make complaints to the Commissioners without having to show that such association is aggrieved by the matter complained of.

## CHAPTER XVIII

### INCREASED RAILWAY RATES

SUB-SECTION 1, Section 38, of the Railways Act, 1921, provides that "an amalgamated company or a railway company to which a schedule of standard charges has been applied shall not be entitled to increase or cancel any exceptional rate which has been fixed by the Rates Tribunal without first obtaining the sanction of that tribunal"; while Section 59 of the same Act provides for a periodical review of all the rates and charges (standard and exceptional) charged by the railway companies and lays down the procedure to be followed if it is found that there is an unexpected surplus or deficit in the companies' revenue. No one can prophesy what will be the result of such periodical review, but there are other aspects of this subject which may here be noted with interest.

#### RATES MAY BE INCREASED BY ALTERING THE METHOD OF COMPUTING THE WEIGHT.

An increase in a railway rate may be made in a variety of ways, e.g. as by altering the method of computing the weight. In some instances this is justifiable; in others not.

Thus, in *Rickett, Smith & Co. and Others v. Midland Railway Co. and Others* (9 R. & C.C. 107) upon a complaint under Section 1 of the Railway and Canal Traffic Act, 1894, by coal merchants and colliery proprietors that whereas the rates and charges made by the defendants for the conveyance of coal and coke were, prior to 1st Jan., 1893, based and calculated upon the carriage of 21 cwt. to the ton, they had, since 31st Dec., 1892, been based and calculated upon the carriage of 20 cwt. to the ton with an allowance for wastage of 2 cwt. per truck carried by the defendants without charge, and that by such alteration in the mode of calculating the weight of coal and coke carried to the ton, the said rates and charges had been indirectly increased by the defendants, and that such increase was unreasonable, the Commissioners held, that the defendants had, by so reducing the weight of coal carried to the ton, indirectly increased their rates and charges for the carriage of coal and coke, and that it had not been proved by the defendants that the



whole of the increase in the rates which had been so made was reasonable.

In *Watson & Sons, Ltd. v. Midland Railway Co.* (13 R. & C.C. 339) it was shown that from 1893 onwards the applicants' soap was carried by the Midland Railway Co. at a computed weight of 1 cwt. 10 lb., which was made up of 1 cwt. or two  $\frac{1}{2}$  cwt. of soap along with the boxes in which the soap was packed. This computation, being less than the actual weight, resulted in a gain to the applicants in 1906 of 6 to 8 $\frac{1}{2}$  lb. per cwt. per package, making a difference of £1,400 in the annual payment of the applicants to the railway company. On 1st April, 1907, the railway company refused to carry the applicants' soap except at the actual weight of each consignment.

Upon a complaint that the railway company had indirectly increased the rates charged to the applicants, the Commissioners held, that there being no evidence of any agreement by the railway company to give the applicants an advantage by the adoption of the computation of 1893, or of any intention to charge them on less than the actual weight, and the practice, which had become the subject of complaint by other railway companies and other traders, having originally been adopted as a convenient traffic arrangement, the railway company had acted reasonably in abolishing the computation. A computation, added the Hon. A. E. Gathorne-Hardy, in this latter case should, in the absence of strong evidence to the contrary, be construed as "a convenient method of avoiding the expense of constant weighings, which, in the absence of agreement to the contrary, is always liable to be altered on proof of any substantial inaccuracy."

#### —OR BY THE WITHDRAWAL OF FACILITIES.

The increase may take the form of the withdrawal of facilities, as in *Manchester and Northern Counties Federation of Coal Traders' Association v. Lancashire and Yorkshire Railway Co.* (10 R. & C.C. 127). Here it was shown that, prior to Feb., 1895, the railway company's tonnage rates included the use of their sidings by the consignees (for coal trucks not belonging to the railway company) for an indefinite period. From 1st Mar., 1895, the railway company made a charge of 6d. per truck per day as "siding rent" after four clear days had been allowed for the discharge of the coal. The



applicants contended that this was an "indirect increase of a rate or charge" within the meaning of Section 1 of the Railway and Canal Traffic Act, 1894, and had to be justified by the railway company. They further contended that the proposed charge was *ultra vires* as being a general condition applicable to the rates and charges authorized by the Railway Companies Rates, &c., Order Confirmation Act, 1892.

Here the Court held that the duty of a railway company as carriers ended after putting the merchandise in a position where the trader could take delivery, and leaving it there for such a reasonable time as would enable the trader, with ordinary appliances, to get his merchandise out of the truck. And that, although the convenience of the trader, since 1st Mar., 1893, had been curtailed, the four days was an attempt by the railway company to fix an extreme limit of time up to which they were content to bear the obligation of "carriers," and to deem it as covered by the conveyance rate; and that making a charge for something for which no charge had been made before (*viz.*, warehouse accommodation) did not constitute an increase, direct or indirect, of any rate or charge.

The Commissioners held, further, that the charge was not *ultra vires*, it being authorized by Sub-Section 4 of Section 5 of the Railway Companies Rates, &c., Order Confirmation Act, 1892, which gave the right to charge for "the detention of trucks or the use of any accommodation before or after conveyance beyond such period as shall be reasonably necessary for enabling the company to deal with the merchandise as carriers thereof, or the consignor or consignee to give or take delivery thereof."

In the case of *Rishworth, Ingleby & Lofthouse, Ltd. and Others v. North-Eastern Railway Co.* (12 R. & C.C. 34) upon a complaint by millers, at Hull, under Section 1 of the Railway and Canal Traffic Act, 1894, that the North-Eastern Railway Co. had, in Aug., 1901, directly and indirectly increased the rate for carriage of flour from Hull, by refusing to perform the service of cartage in Hull without extra charge, and by refusing to allow traders performing their own cartage the former rebate (which varied from 6d. to 1s. per ton), and that such increases were unreasonable, the Commissioners held, that the railway company, having shown that the increase was made in *bona fide* obedience to an Order of

the Court, to avoid a preference found undue, by levelling up the rate at Hull to that at Goole, and also having shown that the levelling down of rates at other similar places to the Hull standard would risk an annual loss of £10,000; the increases complained of were reasonable.

#### —OR BY ALTERING THE CLASSIFICATION.

A railway rate can also be increased by altering the classification of the article. An instance of this is given in the case of *White, Tomkins & Co. v. London and North Western Railway Co.*, on page 25. Here are two more useful examples.

In *Beeston Foundry Co. Ltd. v. Midland Railway Co.* (14 R. & C.C. 119) the applicants had consigned certain traffic under the description of "bundles of water pipes," which was carried by the railway companies originally at Class C rates or at Class 1 rates, according to the weight consigned. The articles in question were coils of pipes which became known as radiators after the classification set out in the Railway Companies Rates and Charges Order Acts was made. The railway companies subsequently placed the said traffic in Class 2 of their classification, and, except as to certain stations, charged upon all consignments of such traffic Class 2 rates, on the ground that the applicants originally had not properly declared and described the articles consigned by them.

The Commissioners held, that as radiators were omitted from the classification the proper course was to apply to the Board of Trade, and that the Railway Commissioners were not the tribunal to decide as to how the articles in question should be classified; but further decided that there had been an increase in the rates which, upon the evidence, had not been justified.

In *Beesley & Co. v. Midland Railway Co. and Cheshire Lines Committee* (*The Times*, 23 July, 1914) evidence was given to the effect that for many years the applicants had been engaged in making, among other things, steel strips which were used for bicycle rims, steel pens, and other articles. For 30 years the railway company had charged Class C rates for the carriage of these strips, but in 1912 gave notice that it was going to charge Class 2 rates for the future. The railway company alleged that it had not known before what the goods actually were which were contained in the applicants' packing-cases, and that the rate for steel

strips of this nature had always been on the higher scale. Mr. Justice Banks, in his judgment, said that the applicants complained of an increase of rates for certain manufactured articles known as strips, all of which were made of Bessemer steel, though they varied in quality and in size. The respondents, in their answer, said that there had been no increase of rate in fact, and that if there had been an increase it was reasonable in the circumstances. The onus of proving the increase was on the applicants, and that of showing that it was reasonable was on the respondents. There was only one question of fact which was really in dispute—how far the respondents were aware of the nature of the goods. According to the evidence, strips had been consigned for conveyance for the past 30 years, sometimes packed and sometimes unpacked. When they were unpacked their nature was obvious; and from the evidence he was satisfied that the responsible officials of the railway knew quite well that the goods which were being sent packed were the same as those which were being sent unpacked. Even if there had been no evidence on the point, the great quantity of the traffic passing would have justified an inference to that effect.

His Lordship then dealt with the history of the rates charged since 1891, and pointed out that in a typical instance now complained of, an increased charge, 18s. 4d. instead of 13s. 4d., had been made since 1912. If the respondents had proved that the lower rate had been charged because the consignors had wilfully mis-described the goods, or that it had been charged through inadvertence, the case would have been different; but nothing of the kind had been made out, and in the result it was clear that an increase of rate had been made, and it was on the respondents to justify it. The respondents said that they were obliged to raise the charge to the applicants in order to remove an injustice to other traders, but they had failed to establish this to his satisfaction, and the applicants succeeded on both points. Judgment would, therefore, be in favour of the applicants; but no evidence had been given as to what would, in fact, be a reasonable rate for this particular kind of traffic, and the judgment would not affect any classification to be made hereafter.

### INCREASES SHOULD BE PAID UNDER PROTEST.

Now, whenever a railway company increases any of its rates there arises the question: What ought the trader to do?

Some authorities—whose views must be respected—say that the trader should decline to pay the increased charges until the proper authority has decided that the increase is justified.

Verily, a bird in the hand is worth two in the bush, as some put it ; and it may perhaps be an easy matter to pay up after the Commissioners have given their decision, if they decide that the increase is justified ; but the writer's personal opinion is that the proper thing to do is to pay under protest and with the proviso that the trader reserves to himself the right to take any action he thinks fit to secure repayment of the amount which he holds to be improperly charged.

Such, at any rate, is the advice usually given by the writer, and seeing that amounts so paid—that is, under protest—are recoverable, the trader has nothing to fear from following it ; in other words, he has not to chance getting his money back again, for Section 1 of the Railway Rates and Charges Act, 1888, decrees that : “ Where the Commissioners have jurisdiction to hear and determine any matter, they may, in addition to or in substitution for any other relief, award to any complaining party who is aggrieved such damages as they find him to have sustained ; and such award of damage shall be in complete satisfaction of any claim for damages, including repayment of overcharges which, but for this Act, such party would have had by reason of the matter of complaint.

“ Provided that such damages shall not be awarded unless complaint has been made to the Commissioners within one year from the discovery of the party aggrieved of the matter complained of. The Commissioners may ascertain the amount of such damages either by trial before themselves, or by directing an inquiry to be taken before one or more of themselves or before some officer of their Court.” Sub-Section 5 of Section 1 of the Railway and Canal Traffic Act, 1888, provides that this Section shall apply in the case of any complaint of increased rates.

Moreover, it must be remembered that—as was pointed out in Chapter XIV—a railway company is not legally bound to give a trader credit, and that if the company does allow a ledger account it is on the strict understanding that this shall not be made the medium for settling disputes. Any flagrant violation of this agreement is—as a rule—promptly met by a stoppage of the credit facilities. Indeed, as a good many know to their cost, this is



precisely what happened to those firms who withheld payment of the increases made by the railway companies in 1913 and failed to file an application in the Railway and Canal Commission Court : the companies closed their credit accounts and put them to the inconvenience of having to prepay the carriage on all their goods.

It will be recalled that this question of the stoppage of credit came up in the case of *Skinningrove Iron Co. v. North Eastern Railway Co.* (5 R. & C.C. 244) when Sir Frederick Peel said : " The applicants also complain that the railway company do not allow them to pay upon monthly accounts, as they do other firms, but require all traffic to be paid on delivery, and each day's consignment of pig iron to be accompanied with a remittance. It appears that early in 1882 they began to have a dispute with the railway company about the rate on ironstone from Brotton mines to the Skinningrove Works ; and on the plea that there had been an excess charge of 2d. or 2½d. a ton on the ore, they, in July, 1884, refused to pay in full the sums due by them on their pig iron carriage account, and deducted £1,500 as a set-off for alleged overcharge on Brotton ironstone ; and thereupon (on 14th Aug., 1884) the railway company informed them that their ledger account would at once be closed, and that the usual credit would no longer be continued to them. I think the company were almost forced into taking this step, and that it is not their fault either if credit is still refused. They give credit to accommodate their customers in paying their accounts with them, and if the accommodation is used by their customers to exercise a control over the company's rates of charge which they would not otherwise have, or as a means of postponing payment indefinitely, the company are, in my opinion, justified in withdrawing it altogether."

In view of the foregoing it certainly seems that the constitutional thing to do is, as has been said, to pay under protest and to file an application with the Commissioners as soon as possible—within a year in any case—so that it may be definitely decided whether or not the increase is justified.



## CHAPTER XIX

### THE POWERS OF THE RAILWAY RATES TRIBUNAL

IN different parts of this book brief mention has been made of the powers vested in the Railway Rates Tribunal for the adjustment of disputes between traders and the railway companies, and it may be well to explain in this chapter how this Court (for such it really is) came into being and what is its precise function.

#### AN HISTORICAL NOTE.

By Section 21 of the Ministry of Transport Act, 1919, it was provided as follows—

21. (1) For the purpose of giving advice and assistance to the Minister with respect to and for safeguarding any interests affected by any directions as to rates, fares, tolls, dues, and other charges or special services, a committee shall be appointed consisting of five persons, one being a person of experience in the law (who shall be chairman) nominated by the Lord Chancellor, two being representatives of the trading and agricultural interests nominated by the Board of Trade, after consultation with the Associated Chambers of Commerce, the Central Chamber of Agriculture, and other interests concerned, one being a representative of transportation interests nominated by the Minister, one being a representative of labour interests nominated by the Minister of Labour, after consultation with the Parliamentary Committee of the Trades Union Congress and other interests concerned, together with, if deemed advisable, one additional member who may at the discretion of the Minister be nominated from time to time by him.

(2) Before directing any revision of any rates, fares, tolls, dues, or other charges, or of any special services, the Minister shall refer the matter to the Committee for their advice, and they shall report thereon to him, and, where such revision is for the purpose of an increase in the net revenue of any undertakings which the Minister determines to be necessary, the Committee shall also advise as to the best methods of obtaining such increase from the different classes of traffic, having due regard to existing contracts and the fairness and adequacy of the methods proposed to be adopted. Before prescribing the limits of rates, tolls, or charges in connection with a new transport service established under Section 9 of this Act, the Minister shall refer the matter to the Committee for their advice.

(3) The Committee, before reporting or advising on any matters referred to them under this section, shall, unless in their discretion they consider it unnecessary or undesirable to do so, give such public notice as they think best adapted for informing persons affected of

the date when and the place where they will inquire into the matter, and any persons affected may make representations to the Committee, and, unless in their discretion the Committee consider it unnecessary, shall be heard at such inquiry, and, if the Committee in their discretion think fit, the whole or any part of the proceedings at such inquiry may be open to the public :

Provided that, for the purpose of this provision, the council of any city, borough, burgh, county, or district shall be deemed to be persons affected in any case where such council or any persons represented by them may be affected by any such proposed revision as aforesaid.

(4) The Committee shall hear such witnesses and call for such documents and accounts as they think fit and shall have power to take evidence on oath, and for that purpose any member of the Committee may administer oaths.

In due course a Rates Advisory Committee was appointed to advise and report, at the earliest practicable date, as to—

1. The principles which should govern the fixing of tolls, rates and charges for the carriage of merchandise by freight and passenger train and for other services.

2. The classification of merchandise traffic and the particular rates, charges and tolls to be charged thereon and for the services rendered by the railways.

3. The rates and charges to be charged for parcels, perishable merchandise and other traffic conveyed by passenger train, or similar service, including special services in connection with such traffic.

The Committee so appointed soon got to work, and on 22nd December, 1920, issued its " Report on General Revision of Railway Rates and Charges, 1920," and known, familiarly, as " Cmd.1098," price 9d. net, and obtainable from H.M. Stationery Office, Kingsway, London, W.C.2. This report, which really formed the basis or framework of the Railways Act, 1921, explained that: " There has for some years been a demand on the part of traders for the setting up of what they call a ' business tribunal ' for the disposal of questions arising between railway companies and the commercial community, and recently this has included a claim that the same authority should fix the rates to be charged for the carriage of minerals and merchandise," and the recommendation of the Rates Advisory Committee in this respect was that " a new tribunal should be set up for the purpose of fixing the rates, tolls and charges to be charged for the carriage of minerals and merchandise and the fares to be charged for the carriage of passengers . . . and sanctioning any variations upwards or downwards therein."

## THE ESTABLISHMENT OF THE RAILWAY RATES TRIBUNAL.

Then, by Section 20 of the Railways Act, 1921, it was provided that—

(1) There shall be established a court styled the Railway Rates Tribunal (in this Act referred to as the "Rates Tribunal"), consisting of three permanent members, with power to add to their number as hereinafter provided, and the Rates Tribunal shall be a Court of Record and have an official seal which shall be judicially noticed, and the Rates Tribunal may act notwithstanding any vacancy in their number.

(2) The permanent members of the Rates Tribunal shall be whole-time officers and shall hold office for such term not exceeding seven years from the date of their appointment as may be determined at the time of appointment and then retire, but a retiring member shall be eligible for reappointment.

(3) The permanent members of the Rates Tribunal may be appointed by His Majesty at any time after the passing of this Act, and from time to time as vacancies occur, and shall be so appointed on the joint recommendation of the Lord Chancellor, the President of the Board of Trade, and the Minister.

(4) Of the permanent members of the Rates Tribunal one shall be a person of experience in commercial affairs, one a person of experience in railway business, and one, who shall be president, shall be an experienced lawyer.

And very soon afterwards the Railway Rates Tribunal came into being.

## THE POWERS OF THE RAILWAY RATES TRIBUNAL.

So far as the functions of the Tribunal are concerned, Section 28 of the Railways Act, 1921, decrees that—

(1) The Rates Tribunal shall, in addition to any other powers conferred upon them under this Part of this Act, have power to determine any questions that may be brought before them in regard to the following matters—

- (a) The alteration of the classification of merchandise, or the alteration of the classification of any article, or the classification of any article not at the time classified, or any question as to the class in which any article is classified ;
- (b) The variation or cancellation of through rates ;
- (c) The institution of new, and the continuance, modification, or cancellation of existing group rates ;
- (d) The variation of any toll payable by a trader ;
- (e) The amount to be allowed for any terminal services not performed at a station, or for accommodation and services in connection with a private siding not provided or performed at that siding ;

- (f) The reasonableness or otherwise of any charge made by a railway company for any services or accommodation for which no authorized charge is applicable ;
  - (g) The reasonableness or otherwise of any conditions as to packing of articles specially liable to damage in transit or liable to cause damage to other merchandise ;
  - (h) The articles and things that may be conveyed as passengers' luggage ;
  - (i) The constitution of local joint committees and their functions and the centres at which they are to be established.
- (2) The powers of the Rates Tribunal under paragraphs (b) to (f) of this section shall not be exercisable until the appointed day.

And it must, in fairness, be placed on record that the Tribunal has so far done its work exceedingly well.

### WHERE THE BOARD OF TRADE COMES IN.

For many years past the Board of Trade has had a good deal to do with the railways—indeed, under Section 24 of the Railway and Canal Traffic Act, 1888, the Board was responsible for the revision of the then existing railway classification ; and the schedules of maximum rates and charges which came into operation in 1891-92 (the Railway Rates and Charges Order Confirmation Acts of 1891-92 in other words) were the results of its labours in this connection.

While under Section 31 of the same Act the Board of Trade had certain conciliatory powers in disputes between the traders and the railway companies—in fact, the Act of 1888 provided that before a trader complained to the Railway and Canal Commissioners with regard to (for example) the classification of a particular article he might first of all submit his case to the Board of Trade who, if a settlement could not be reached with their aid, would give him a certificate authorizing him to go to the higher authority—the Railway and Canal Commission Court—for adjudication.

And, although the Railway Rates Tribunal has now been established as a business tribunal and given fairly wide and extensive powers in the matter of rates and charges and disputes between the traders and the carriers, it is still necessary, in some instances at any rate, for the Board of Trade's certificate to be obtained before one can appear before the Railway Rates Tribunal, as this Section—78 of the Railways Act, 1921—shows—

- (1) Where under this Act an application may be made by a representative body of traders, or by a body of persons representative of

trade or a locality, the application may be made by any of the following authorities or bodies—

(a) any harbour board, or conservancy authority, the common council of the City of London, or the council of any county or borough or district ; or

(b) any such association of traders or freighters, or chamber of commerce, shipping or agriculture as may obtain a certificate from the Board of Trade that it is, in the opinion of the Board of Trade, a proper body to make such an application.

(2) Subject as in this section provided, no company, body, or person not directly interested in the subject-matter of any application shall be entitled to make such application.

(3) Any authority or body as aforesaid may appear in opposition to any application, representation, or submission in any case where such authority, or the persons represented by them, appear to the Board of Trade to be likely to be affected by the decision on any such application, representation or submission.

(4) The Board of Trade may, if they think fit, require as a condition of giving a certificate under this section, that security be given in such manner and to such amount as they think necessary, for costs which may be incurred.

(5) Any certificate granted under this section shall, unless withdrawn, be in force for twelve months from the date on which it was given.

In future, presumably, the obtaining of this certificate will be more or less a pure formality.



## CHAPTER XX

### INTERNAL WORKS TRANSPORT

#### SOME PROBLEMS AND THEIR POSSIBLE SOLUTIONS

It is impossible—save perhaps in a few isolated instances here and there—for the architect so to plan the lay-out of a factory that the transport arrangements are good for all time. In capable hands the business grows—the sales side will concentrate on a fresh territory every now and again, as often as circumstances will permit, and there is thus created a growing demand for the firm's products—and hence it is that the factory itself has to expand, and, in the expansion, the transport facilities, which were good enough at the outset, often become wholly inadequate, and have to be reconsidered and revised. Also, of course, transport, like everything else, is continually being improved upon, and the methods of yester-year have to give place to modernized means of movement—as the canal barge did to the railway, and as the railway train is having to do to the airship. The alert mind is always on the look-out for the better way.

First, then, as to the internal railway system.

#### THE INTERNAL RAILWAY SYSTEM.

The function of an internal railway system may be said to be to facilitate the movements of all kinds of materials from one part of the factory to another, and to connect the various loading and discharging berths with the main line in cases where, as is nowadays an almost invariable practice with large manufacturing concerns, the factory is connected with the main line by a private siding. In other words, this second function is to enable raw materials to be brought off the main line system, on arrival, direct to the appropriate berth, in the place where they are to be consumed or stored; and also to ensure that the manufactured article shall be conveyed direct from the warehouse or other loading berth to the siding, connecting with the main line, whence they can be dispatched to the various consumers. In any business of large proportions an internal railway system becomes in time an absolute necessity, if

the manufacturer is to compete successfully with rivals in the same line of business.

### NECESSITY FOR CARE IN THE LAYOUT.

Upon the careful planning and layout of the railway lines in the bounds of a factory a very great deal depends. Carelessness in this respect may lead to all kinds of trouble and expense, and for this reason the engineer in charge of the job must be a practical railway man with knowledge and experience of the class of work required.

The layout of the lines and the quality of the materials used in their construction must, of course, depend largely upon the service that is to be required of them, and the location of the buildings and territories to be served, but in this respect the future must be kept in view as well as the present. Trite though this remark may appear, it is surprising how often its advice has been disregarded, and the system has had to be relaid almost entirely, or else largely remodelled in consequence. If light rails—60 or 75 lbs.—are laid down in the first place, they are often found subsequently to be inadequate for the increased volume of the traffic. If, therefore, it is anticipated that the volume of the traffic will in time become heavy, it is advisable to lay 85 to 95 lb. rails in the first place, so as to ensure safety and strength to withstand the wear and tear in dealing with a voluminous traffic.

### CURVES AND INCLINES.

Similarly with curves, it is advisable when planning to look to the future. Bigger vehicles for heavier loads are continually being introduced, and, generally, with the increase in their capacity, a longer wheel-base is necessitated, which will prevent these vehicles from going round the curves which were practicable for the older types of stock.

Apart from this aspect, a sharp curve, however well banked and protected by check rails, is almost bound to cause buffer locking, and consequent derailment, at some time or other. It is cheaper in the end even to alter curves than to suffer the expense of constant derailments, entailing as they do the cost of repairs to the chairs and sleepers of the track and often to the vehicle as well.

It is the same with inclines ; it is better to make a long detour rather than to risk too abrupt a slope. In wet weather, if not at

other times, "sanding" is often of no avail on a greasy rail, and somehow or other the loco. cannot "hold its load" on any considerable incline. When something of an incline cannot possibly be avoided, every precaution should be taken, such as the provision of a catchpoint near the bottom, so that any vehicle which breaks away from its train may be thrown off the rails, and prevented from doing much damage.

### AND POINTS.

Incidentally, every catchpoint should be provided with a good heavy tumbler, so that the point may be always kept set for action. The same remarks, indeed, apply to any kind of point; in other words, the lever which operates the pair of points should be weighted to such an extent that the mere action of throwing it over will cause the points to be automatically adjusted to their required position, without any intervention on the part of the shunter. If no weight, or an insufficient one, is used, the shunter has to hold the lever down either with his hand or foot, as the train passes over. He is, indeed, often liable to shirk even this exertion, if no one is about to see what is going on, as he can always say—even if a wagon does split the points and cause a derailment—that his weight was not sufficient to hold the lever down while the train was passing. It is amazing how frequent these occurrences are, with such kinds of points, when no one is there to see.

### AND CROSSOVERS.

At least one crossover should be provided whenever a double set of lines occur, running parallel with each other for any considerable distance, so as to avoid the necessity for doing a lot of haulage in order to get a particular wagon or two from the middle of a train, or to put either empty or loaded vehicles into a particular berth, when other work is in progress on the same set of rails. To have two or three loading or discharging berths on one set of rails—as, for example, on the edge of a wharf or along a warehouse stage—and no crossover anywhere on to another set of rails running parallel to the first, or in proximity to it, is wasteful; it involves waste of loco. power and time, as well as involving stoppages in the work of men who are occupied at other jobs on the same section of line, where a shunt is not required at the same time.

## MARSHALLING SIDINGS.

It is advisable also, when laying out the internal system, to provide adequate marshalling sidings, in close proximity to the main line connection. Such sidings would serve for sorting out train loads of inwards goods, for marshalling or assembling the wagons of outwards goods into their appropriate trains, and for separating empty wagons into the different kinds of stock, i.e. keeping common-users, pipe-wagons, and pipe-vans of the different companies on separate sidings, from the time of the arrival of a train load of empties until the different types of vehicles are actually required for loading, sometimes as much as a day later.

## SIDING CONNECTION WITH THE MAIN LINE.

A siding connection with the main line is obtained by negotiation with the particular railway group to which that portion of the main line which runs alongside the factory belongs (as to which see more particularly the next chapter). The Railways (Private Sidings) Act, 1904, decrees that: "The reasonable facilities which every railway company is required to afford under Section 2 of the Railway and Canal Traffic Act, 1854, as amended or explained by any other Act, shall include reasonable facilities for the junction of private sidings or private branch railways with any railway belonging to or worked by any such company; and reasonable facilities for receiving, forwarding and delivering traffic upon and from those sidings or private branch railways."

From which it may be seen that the railway companies have not the right to refuse any reasonable request from a firm desirous of securing the advantages accruing from the addition of a private siding connection.

Here again the junction with the main line and the layout of the sidings connected with it will be dependent upon the amount of traffic to be handled—for, of course, the length and number of the sidings to be laid down adjacent to the main line will depend upon the number of vehicles which will, according to anticipation, pass into or out of the factory by this means. Extra sidings must, however, be provided for the accommodation of inward trains and the marshalling of outward ones.

In short, in fact, the layout of a factory's internal system should be so planned that any vehicles requiring to be moved from one

part of the works to another could be so moved by the shortest possible route and without undue risk either to life or to limb.

### ALTERNATIVE MOTIVE POWER.

When the trains to be hauled consist mostly of only two or three wagons, the shunting can be performed by horse power, tractor, or capstan. Though at one time largely employed in railways' goods yards, the horse has, by this time, been almost entirely superseded. The tractor is very popular in the States, partly because this machine originated there, but it can only be used effectively for rail haulage where the track is laid level with the roadway. Of course, it has the advantage of being used for ordinary road haulage when not required for shunting purposes. Steam, hydraulic, or electric capstans are also very useful for shunting and are employed with notable success by many firms ; the cost of instalment, however, is very heavy in the case of a large factory.

For heavy work, however, the locomotive is undoubtedly best. There are three types of loco. in common use: petrol locos. and electric locos., capable of hauling only three or four wagons at a time, with safety, in all weathers ; and the steam loco., which is the most powerful, being capable of hauling anything up to forty or fifty wagons at a time. For this reason the latter means of haulage is to be recommended as a general rule.

### CONTROL.

The most important question in the organization of internal works transport by rail is that of control. However carefully the work may be planned, if the area to be worked is vast, and a great deal of shunting is required, necessitating the use of many locomotives, there is bound to be a lot of overlapping of jobs, unless there is adequate supervision from one central point. Even if a big gang of shunters is allocated to each locomotive, and a foreman shunter with each gang, if there is no means whereby the jobs can be dovetailed into one another by someone with a complete grasp of the whole situation, wastage is bound to occur. Light running is excessive, as locos. are brought from distant points to do a job for which a nearer one could be used, one loco. is idle while another



is working more than the shift, and so on. Hence the necessity for control.

Two or three of the largest firms have introduced into their works a system whereby a "controller" situated in a "central control" is enabled to keep in touch with every locomotive, and to know at every moment of the twenty-four hours exactly what each locomotive is doing. Small cabins, corresponding to the railway companies' "wayside boxes," are located at different strategic points about the estate, manned by control men who are all in direct telephonic communication with the "central control." These men, in fact, pass on information almost continuously as to the movements of locomotives in their section, and the controller is thereby able to keep in touch with all that is taking place. He knows the causes of any unusual delays, can assign a new job to each locomotive as it finishes the previous one, and, in short, has absolute control over the whole system, and is wholly responsible for its efficient and economical working, so that he must be able to account for any apparent lapses to those in higher authority. Every job and every movement can be graphically recorded for each locomotive, one axis of the graph being divided into small time sections and the other into sections representing the different vantage points to which the loco. is likely to run. Along the resultant graph notes are made of the number of vehicles hauled, etc., so that a complete record is available of the work done during any particular period. That is modern train control—a system which makes for efficiency and economy.

### **SOME EVERYDAY PROBLEMS.**

Many problems arise in regard to both the raw materials and the finished goods. To take the raw materials first: the foremost is the handling of the fuel for the creation of the power for the performance of the hundred and one jobs which arise in any works. This may come in by one of three ways: by road, rail, or sea, although in the great majority of cases it arrives by railway. In any event, and especially where there is a large consumption, a "dump" has to be made as a stand-by in case of emergency (e.g. so that the factory will not have to shut down immediately a strike of either the miners or the railwaymen takes place), and for the purpose of making this dump railway inclines may be built so that

the incoming loaded coal wagons may be run up on to the "high level" and off loaded from their elevated position. If the vehicles have drop bottoms so much the better, as then, by the mere knocking out of a lever or "pawl," the discharge is effected in a few seconds. Otherwise hand power (man and shovel) has to be employed, and this is obviously more costly. If no railway inclines are built, hand power is the only practical method of effecting the discharge. To get the coal from the dump it must be either reloaded into railway wagons on the ground level or carted thence to the boilers.

In some factories, where the fuel required for immediate consumption is deposited into a "hopper," a wagon "tippler" is used, as by this means the full wagon (after it has been secured by chains or clamps, or both) is turned upside down and emptied by one simple operation, the fuel being subsequently conveyed from the hopper to the boilers by an endless belt with "scoops" or buckets attached to it. There is another mechanical appliance on the market—a small endless belt with scoops attached—which can be fitted alongside a battery of boilers—so that the fuel can be shovelled straight out of the wagon into these scoops and elevated thence straight to the stoke hole.

### HORSE AND MECHANICALLY PROPELLED VEHICLES.

Maybe another raw material is sheet-tin for making chocolate or biscuit tins. This—we will assume—arrives in railway wagons and has to be located in a store. An ideal arrangement, of course, is for the stock of any raw material to be located immediately alongside the consuming point, but in practice this is often enough far from the case—the stock being kept a long way from where it is subsequently required, there being no nearby place available. To transport tin—or any other commodity for that matter—from A to B inside a works, one of several methods may be employed: man-power, horse and lorry, motor or electric vehicle, or perhaps (but this is a remote possibility) a gravity conveyer or endless belt. As to these: man-power is seldom used unless the distance to be traversed is very short, as the cost is prohibitive; horse and lorry—this method still has much to recommend it, as it is fairly cheap to maintain if the haul from A to B is short, and if there is, of a necessity, any standing time involved, the loss is not great, but the mechanical vehicle—the petrol or electrically driven vehicle is the

better means of transport if a long distance has to be travelled and a quick turn round is assured. Upon that last point a good deal depends, as it is impossible to employ a costly mechanically-propelled vehicle profitably if it is going to be kept hanging about for its load or waiting to be discharged the other end of its journey. Speedy loading and off-loading is essential: you cannot sink many hundreds of pounds—possibly a thousand—in (say) an electric vehicle and make it pay if it is going to do only six or seven runs per day, but kept continually on the move it is a profitable investment. Incidentally, very few mechanically propelled vehicles can be made much use of if the roadways inside the works are uneven or intersected with raised railway lines; of a necessity they require a roadway with a fairly even surface or specially prepared runways—this in spite of what the makers and salesmen of these machines may say. Some of these gentlemen would have us believe that their vehicles are like tanks, and are, therefore, entirely unaffected by an obstacle, but—they aren't! Far from it. Try running an electric truck over uneven granite sets (for example) and you'll soon see what will happen!

Another useful machine which is finding favour in this country is the tractor, but here again the conditions must be favourable. A tractor has this distinct advantage: it is a power unit and power unit only, and, as such, can be employed for hauling trailers from anywhere to anywhere. Its disadvantage is that it will not "back" (like a horse will) into and out of a confined space—this, again, in spite of what the makers of them say. Given the necessary conditions, however—a proper road to run upon and plenty of work to do—it is a most useful and economical method of transport. It will pull two fairly heavily laden trailers with ease, and can be turned from one job to another—from hauling raw materials to hauling manufactured goods—at will, and, what is more, if it is fully licensed it can be turned over from internal haulage to external haulage—to making runs up to a distance of eight or ten miles—with profit, owing to its speed and capacity when compared with a team and lorry or (say) a motor lorry costing twice as much.

## THE FINISHED GOODS PROBLEMS.

Similar problems arise in connection with the finished goods. These may be trucked from the packing rooms to the warehouses

by man-power, or elevated and sent down gravity conveyers, sent along electrically driven endless belts, or transported by electric trucks operated by girls. Obviously, indoors there are not the same floor conditions to contend with as outdoors, but other conditions have to be taken into account—e.g. space and head room. Where there is a continuous flow of manufactured goods—in small cases, let us say—and there is sufficient head room, naturally it pays to install gravity conveyers, as the “weight does the work,” to use a slogan, but in the absence of the room upwards, one must either resort to electric trucks or the old-fashioned hand truck. The electric truck with detachable platform is the most popular, as it can be kept more on the move than the one without the detachment, but here again, space is a great factor; there must be plenty of room for the truck to operate or it will only prove a nuisance to everybody and, therefore, a costly failure. Where the space is very limited, then the man with the hand truck cannot be displaced—however old-fashioned it may appear.

From the warehouse onwards—until the manufactured goods eventually find their way into the hands of the consumers—many means of transport may be employed, but so far as the transport to be performed inside the factory is concerned, all the means already touched upon—man power, horse power, electric truck, petrol vehicle, tractor and trailer—are available for experimental purposes if not already in use.

### A VITAL POINT.

Summarized, the position is this: For the performance of modern internal transport work, new and improved machines are being placed on the market, and a careful study of these may be the means of introducing efficiency and effecting economy within any factory where up-to-date methods mean so much. But it is vital that the operators be given a direct interest in the success of the venture. Job cards are all very well, but if the man (or girl) at the wheel, as well as the packer whose cases are being transported, is not given a bonus on the work done, the best results are not likely to be obtained. In all these matters the individual has to be reckoned with.



## CHAPTER XXI

### PRIVATE RAILWAY SIDING LAWS AND REGULATIONS

By Section 76 of the Railway Clauses Consolidation Act, 1845, it is decreed that—

A railway company shall, if required, at the expense of such owners and occupiers and other persons . . . make openings in the rails, and such additional lines of rail as may be necessary for effecting such communication, in places where the communication can be made with safety to the public, and without injury to the railway, and without inconvenience to the traffic thereon . . . but this enactment shall be subject to the following restrictions and conditions (that is to say) . . . The Company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, nor upon any inclined plane or bridge, nor in any tunnel.

Then, by Section 2 of the Railway and Canal Traffic Act, 1854, it is provided that—

Every railway company, canal company, and railway and canal company shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles; and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever; nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus, station, or wharf of the one near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf.



And the Railways (Private Sidings) Act, 1904, decrees by Section 2 as follows—

The reasonable facilities which every railway company is required to afford under section 2 of the Railway and Canal Traffic Act, 1854, as amended or explained by any other Act, shall include reasonable facilities for the junction of private sidings or private branch railways with any railway belonging to or worked by any such company ; and reasonable facilities for receiving, forwarding, and delivering traffic upon and from those sidings or private branch railways.

### THE RIGHT TO A PRIVATE SIDING.

It is, therefore, quite clear that a firm with a sufficient volume of traffic has an absolute right to a private railway siding—always provided, of course, that the interests of the trader and the railway company and/or the general public do not conflict. Whenever an application is made for an Order under the last quoted section, to direct a railway company to afford reasonable facilities for the junction of a private siding, together with facilities for receiving and delivering traffic at such siding, the Railway Commissioners have regard to the circumstances of the applicant, the railway company, and the general public. For instance, in *Greenwood v. Cheshire Lines Committee* (13 R. & C.T.C. 169), the applicant proposed to connect his siding with the company's railway by a junction with the shunting neck of a goods yard, but the Commissioners disallowed the application on it being shown that the working of the junction would seriously interfere with the general merchandise dealt with at the same place and in the adjoining goods yard for and on behalf of the general public. Again, in *Gibbons v. Rhymney Railway Co.* (1910), a siding had been made by a contractor in connection with a railway under an agreement which was terminable by either party on three months' notice, and the railway company gave notice of their intention to terminate the agreement on the grounds that the siding was unsafe to the general public and inconvenient so far as regards the general merchandise carried over the main line. Here the Commissioners refused to grant an application under the Railways (Private Sidings) Act, 1904, holding that it must be abundantly clear that a siding can be provided with safety to the passenger and general merchandise traffic carried over the main line before an order for a private siding can be made. In *Dublin Whisky Distillery Company v. Midland Great Western Railway*

*Co.* (4 R. & C.T.C. 32), where it was doubtful whether the Board of Trade would allow a proposed siding junction to be used, and where in any event its use would have seriously interfered with the course of the main line traffic, the Commissioners refused to make an order for the proposed junction as a "due and reasonable facility." And in *Beeston Brewery Co. v. Midland Railway Co.* (5 R. & C.T.C. 53), where it was proposed to lay down a siding at a place appropriated for use as a station, the Commissioners refused their consent on the grounds that it was against the public interest to do so.

### A PRIVATE SIDING A MATTER OF ARRANGEMENT.

But the construction of a private siding is—and must of a necessity be—a matter for negotiation and arrangement with the general manager or chief goods manager of the railway company in connection with whose line it is desired to make the connection. It is impossible to give a set of general rules and regulations for the construction of any siding and the maintenance of it when once it has been established, as different conditions apply in different cases. Thus : one firm may require the railway company only to place the inwards loaded wagons at the entrance to their works, after which they will themselves perform the internal shunting service by means of their own locomotives, and place their outgoing wagons at the same spot for the railway company's engine to haul away to their respective destinations ; whereas, another firm may not possess any loco. power and, therefore, require the railway company to perform all the internal work for them, and so on, in the variety of cases. But the accompanying "Model Siding Agreement," issued by the board of Trade, may be taken as a useful guide in this matter.

#### MODEL PRIVATE SIDING AGREEMENT.

An Agreement made this                      day of                      between the  
    RAILWAY COMPANY (hereinafter called "The Railway  
 Company") by the hand of                      of the one part and  
    (hereinafter called "Siding Owner ") by  
 their                      and Agent of the other part.

Whereas the Siding Owner has requested the Railway Company to construct and lay down the Junctions Sidings and Works hereinafter mentioned and to connect the said sidings with sidings constructed or to be constructed as hereinafter provided by the Siding Owner on his own lands and communicating

with the \_\_\_\_\_ or Works of the Siding Owner known as the \_\_\_\_\_ and the Railway Company have agreed to comply with such request upon the terms and conditions hereinafter contained. Now therefore it is hereby mutually agreed and declared between and by the parties hereto as follows, namely—

1. The Railway Company will upon payment to them by the Siding Owner of the sum of £ (the estimated cost of the necessary works) forthwith form construct and lay down upon their Railway and land near in the County of the junctions sidings and works shown upon the plan hereto annexed and thereon coloured Red and connect the same with the sidings so laid down or to be laid down by the Siding Owner on his own lands shown upon the said plan and thereon coloured Blue together with such signals locking-gear telegraph telephone and other apparatus in connection with the same junctions sidings and works as in the opinion of the Engineer for the time being of the Railway Company shall be necessary and will complete the same respectively and with all reasonable dispatch. The Siding Owner shall also pay to the Railway Company the additional cost (if any) beyond the said estimated cost that may be incurred by the Railway Company in completing the same junctions sidings signals locking-gear telegraph telephone and other apparatus as certified by the Engineer of the Railway Company and such amount shall be paid by the Siding Owner to the Railway Company on demand. If the actual cost of the junctions sidings signals locking-gear telegraph telephone and other apparatus shall not amount to the said sum of £ the Railway Company shall forthwith repay the balance to the Siding Owner. Any difference as to such actual cost shall be settled by an Arbitrator to be appointed by the Board of Trade.

2. The Siding Owner shall if he has not already constructed the same forthwith at his own expense and to the satisfaction in all respects of the Engineer of the Railway Company construct and lay down in connection with and continuation of the said junctions sidings and works coloured Red on the said plan the sidings coloured Blue thereon.

3. Should the Board of Trade or the Railway Company at any time or times be dissatisfied as to the sufficiency of the signalling or other works shown on the said plan hereto annexed the Siding Owner shall forthwith pay to the Railway Company any additional cost that may be incurred by them in complying with the requirements of the Board of Trade or in carrying out the requirements of the Railway Company in relation to any alteration therein or to any further or additional signal box locking-gear telegraph telephone or other apparatus or other works the amount of such additional cost to be certified by the Engineer of the Railway Company and paid by the Siding Owner to the Railway Company on demand. Any difference as to such actual cost or the requirements of the Railway Company shall be settled by an Arbitrator to be appointed by the Board of Trade.

4. The said junctions locking-gear sidings signals telegraph telephone and other works to be constructed and laid down by the Railway Company as hereinbefore mentioned on the land of the Railway Company shall during the continuance of this agreement be repaired and maintained by the Railway Company and the expenses incurred by them in repairing maintaining or renewing the said junctions sidings signals and works or any of them shall from time to time be certified by their Engineer and paid by the Siding Owner to the Railway Company on demand. Any difference as to such actual cost shall be settled by an Arbitrator to be appointed by the Board of Trade.

5. Any sidings or works laid down in connection with and in continuation of the said junctions sidings and works which may be upon the land of the Siding Owner and over which the locomotives carriages or wagons of the Railway Company may travel shall during the continuance of this Agreement be kept in repair by the Siding Owner to the satisfaction of the Engineer of the Railway Company.

6. The Siding Owner shall pay to the Railway Company on the \_\_\_\_\_ in every year the sum of \_\_\_\_\_ by way of rent for the easement over their land upon which the said junction sidings and works are constructed and laid down the first payment of the said sum of \_\_\_\_\_ shall be made on \_\_\_\_\_

7. Signalmen where necessary shall from time to time be appointed by the Railway Company to work the signals locking-gear and telegraph apparatus in connection with the said junction and the Siding Owner shall from time to time on demand repay to the Railway Company all sums of money which shall from time to time be certified by the General Manager of the Railway Company to have been necessarily expended by them for the uniform wages and stores of or otherwise in relation to every signalman appointed by the Railway Company as aforesaid and if the Railway Company shall not think it necessary to appoint signalmen the Siding Owner shall from time to time on demand pay to the Railway Company all expenses as certified by the said General Manager attending the working of the points of the said junction by other servant or servants of the Railway Company.

8. If and so often as in the opinion of the General Manager of the Railway Company any further or additional siding accommodation shall be reasonably requisite or necessary for full or empty wagons passing to or from the said siding the Siding Owner shall forthwith upon the request in writing of the General Manager provide construct lay down and maintain upon his own land all such further or additional siding accommodation at his own expense. Any difference as to the reasonableness of the Railway Company's requirements shall be settled by an Arbitrator to be appointed by the Board of Trade.

9. The Siding Owner and the servants and workmen employed by him shall at all times during the continuance of this Agreement when upon the Railway Company's land be under the control of the Railway Company's Station Master or Agent at their \_\_\_\_\_ Station or other proper officer of the Railway Company and shall comply with the regulations orders and directions of the Railway Company and of their District Superintendent or other proper officer and in the event of any of the said servants or workmen not complying therewith or otherwise misconducting themselves such servants or workmen shall upon the request of the Railway Company by their Secretary or General Manager be prohibited by the Siding Owner from coming upon the Railway Company's premises and the Siding Owner shall indemnify the Railway Company against all loss costs damages claims or demands made upon or incurred by them in consequence of such non-compliance or other misconduct.

10. The Siding Owner shall be responsible for and shall keep the Railway Company indemnified against all damage and injury of every description which may occur in working the traffic through on or over the said junction sidings and works caused by the neglect or misconduct of the servants of the Siding Owner.

11. If and so often as the Railway Company require to widen alter or provide additional or other accommodation for or in connection with their Railway and for any of such purposes shall require the removal or alteration of the said junctions sidings and works or any part thereof they shall be at liberty to effect such removal or alteration interfering as little as possible with the accommodation and traffic of the Siding Owner and without being liable for or having to make compensation for any delay or obstruction caused thereby to the business of the Siding Owner and the Railway Company shall in case of removal or alteration and if reasonably possible before interfering with the existing junctions sidings and works provide with all reasonable dispatch other junctions sidings and works in substitution for those hereby agreed to be constructed by the Railway Company if they can conveniently do so on their own land or if not on land to be provided by the Siding Owner free of expense to the Railway Company and such other junctions sidings



and works if and when provided shall be in all respects subject to the terms and conditions of this Agreement.

12. The Siding Owner shall at his own costs and charges set up and provide and at all times hereafter maintain proper gates and fences for preventing trespass by cattle horses or other animals or by persons on foot at the place or places where the works hereinbefore agreed to be executed will be carried through the Railway fence and shall pay and discharge all costs charges damages or expenses whatsoever which the Railway Company may pay or be put to by reason of any trespass upon the said Railway occasioned or suffered by the insufficiency or defect of and in the said gates and fences and effectually save harmless and indemnify the Railway Company against any claims costs payment or loss in respect thereof.

13. The Railway Company shall have the right in cases of urgency to use the said junctions and sidings coloured Blue and Red for the purpose of temporarily accommodating thereon engines trains carriages vans and trucks whenever there shall be room.

14. The Railway Company shall have the absolute right of using such junctions sidings and works as shall be constructed on the land of the Railway Company for the purpose of giving access to any other siding or communications they may think advisable to lay down and construct for the convenience and use of any other person or persons whomsoever. Provided nevertheless that the liberty of user granted by this clause shall not be exercised so as unreasonably to interfere with the traffic of the Siding Owner and that the Siding Owner shall be relieved of a fair proportion of the cost of construction of the junctions sidings or works so used and of the cost of the maintenance and of the signals and signalmen required to protect the same.

15. The said Sidings shall (except with the previous consent of the Railway Company under the hand of their General Manager) be used by the Siding Owner for the purposes and accommodation of the Traffic of Works exclusively and the Siding Owner shall not permit any other person or persons to use the said sidings or any part thereof without the like consent of the Railway Company.

16. This Agreement shall continue in force for the term of years and thenceforth until determined by either of the said parties by three calendar months' notice in writing PROVIDED ALWAYS that if the Siding Owner shall fail to comply with the provisions of this agreement or shall cease to send a reasonable amount of traffic over the said Siding for a period of 12 months except in case of strikes lock-outs or accidents causing stoppage of works the Railway Company may determine this Agreement by three months' notice in writing and on the expiration of any notice given under this clause it shall be lawful for the Railway Company to disconnect take up and remove the said junctions sidings and works or any other junctions sidings and works which shall have been made in substitution therefor respectively on the land belonging to the Railway Company and the expenses incurred by them in so doing shall be ascertained certified and paid in the same manner as the expenses mentioned in Article 4 of this Agreement but credit shall be given to the Siding Owner for the then value of any materials on the land of the Railway Company which shall have been provided by and at the expense of the Siding Owner such value to be ascertained and certified by the Engineer of the Railway Company.

As Witness the hands of the parties the day and year first before written.

#### NOTES

(a) Clause 1. A plan showing the works proposed by the Railway Company's Engineer should be submitted to the applicant before entering into the Agreement, on which the siding and works on the Railway Company's land should be coloured Red and the sidings and works on the Siding Owner's land should be coloured Blue, as mentioned in the MODEL AGREEMENT. If in the applicant's view the proposed works are unreasonable, and the difference cannot be adjusted, it is competent for him to have the reasonableness or otherwise of the requirements of the Railway Company's Engineer



decided upon by the Railway and Canal Commissioners under the provisions of the Railway and Canal Traffic Acts.

(b) Clause 6. The usual annual sum to be paid to the Railway Company for a simple easement is nominal, say, one pound.

(c) Clause 8. It is usual for the Siding Owner to marshal traffic on his own land to meet the reasonable requirements of the Railway Company, failing which he may be liable under section 5 of the Schedules to the Railway Rates and Charges Order Confirmation Acts, to a charge for services rendered by the Railway Company.

(d) Clause 15. After this clause any special clauses agreed to between the parties dealing with questions of rates, tolls, charges, rebates, services, detention, etc., which vary with the circumstances in different cases, may be provided for.

Incidentally, it may be mentioned that when once a private siding has been constructed in a works and joined up with the main line, the railway company cannot of its own free will disconnect it. For example, in *Portway v. Colne Valley and Halstead Railway Co.* (7 R. & C.T.C. 102), the applicant complained that the defendants had wrongfully taken up and removed the rails forming the connection of a branch railway or siding belonging to the applicant with the defendants' main line of railway, whereby the applicant was deprived of the use of the said siding as a means of receiving from the defendants goods consigned to him, and which had come by the defendants' railway, and also of delivering to the defendants goods for conveyance on their railway, and the applicant applied to the Court under Section 76 of the Railway Clauses Act, 1845, and the Railway and Canal Traffic Act, 1888, for an order enjoining the defendants to restore the connection between his siding and their railway. The Commissioners found that the defendants had wrongfully taken up and removed the rails forming the connection of the applicant's branch railway or siding with the defendants' main line of railway, and ordered and enjoined the defendants at their own expense forthwith to restore the communication between the applicant's siding with the defendants' line of railway.

Nor can a railway company single out any particular traffic and refuse to deliver such traffic at an established siding. Thus, in *Cowan & Sons v. North British Railway Co.* (10 R. & C.T.C. 169), it was shown that the railway company, who had for twenty-eight years received and delivered coal and goods at a private siding belonging to the applicants, informed them that, whilst they were willing to receive and deliver other goods as before, they would no longer deliver coal at the private siding. In this case the Commissioners found (1) that the delivery of coal at the siding was a due and reasonable facility which the railway company were bound to afford, and they made an order upon the railway company accordingly; and (2) that by delivering coal at the private siding of

competitive traders and refusing to deliver it at the applicant's siding, the railway company were giving undue preference to the former, and ordered them to desist from so doing.

### RATES AND CONDITIONS MUST BE REASONABLE.

It will be clear from the foregoing that the rates and conditions applicable to private siding traffic must be just and reasonable. The rates and charges for conveyance along the line as well as for the provision of station and service terminals have been determined by the Railway Rates Tribunal (see p. 199), and it should be carefully borne in mind that a railway company has no right whatever to charge *station* rates for *siding* traffic—although sometimes the railway companies do attempt to do this; in fact, in some cases, they have actually made such charges.

The Railways Act, 1921, by its Fifth Schedule, Section 3, Sub-section 2, provides as follows—

Where merchandise conveyed in a separate truck is loaded or unloaded elsewhere than in a shed or building of the Company, the Company may not charge to a trader any service terminal for the performance by the Company of any of the said services if the trader has requested the Company to allow him to perform the service for himself and the Company has unreasonably refused to allow him to do so. Any dispute between a trader and the Company in reference to any service terminal charged to a trader who is not allowed by the Company to perform for himself the service shall be determined by the Rates Tribunal.

This and what follows establish the fact that service terminals are not chargeable for traffic delivered into a private siding, and in the case of *Pidcock v. Manchester, Sheffield and Lincoln Railway Co.* (9 R. & C.T.C 45), it was shown that the applicant was the owner of a siding which communicated with the railway of the defendant company at a point situated about thirty or forty yards from the Retford Goods Station of the defendant company. A dispute having arisen between the applicant and the defendants as to the allowance or rebate to be made from the rates charged to the applicant in respect that the defendants did not provide station accommodation or perform terminal services for the applicant's traffic received or delivered by the defendants at such siding, the Commissioners, after hearing all the evidence, held that, as by Sections 3 and 26 of the defendant company's Order Confirmation Act,

1892, Retford was not a "Terminal" station, the railway company were not entitled to charge to the applicant a station terminal at Retford in respect of their traffic passing from or to the siding of the applicant connected with the Retford station; and the Commissioners ordered the railway company to give the applicant certain allowances or "rebates" for the non-provision by them of station terminals.

If the mode in which a junction with the siding of a private owner has been effected is such that a railway company need incur no greater expense in connection with it than is involved in stopping a goods train specially at the siding junction, and either uncoupling trucks there and depositing them in the siding clear of the points, or drawing out trucks ready marshalled and attaching them to the train, doing no work within the siding, and being paid for any special use of levers by signalmen in a signal box, there is then a mere delivery for which no extra payment is due.

Thus, in the case of *Portway v. Colne Valley and Halstead Railway Co. and Great Eastern Railway Co.* (10 R. & C.T.C. 211), the applicants were the owners of a private siding near the Halstead Station of the Colne Valley Railway Company. Partly from the siding having only one line for both outgoing and incoming trucks, and partly from its joining the main line at a very short distance from where that line crosses a street in Halstead, on the level, so bringing the case under the rules of the Board of Trade as to the shunting of trains over a level crossing, and engines standing across the same, it was not possible for a goods train to stop at the siding junction and for its engine to uncouple a truck and deposit it in the sidings or to draw a truck out and unite it to the train. All trucks to or from the applicant's siding had to be taken into the goods yard at Halstead Station and there prepared for dispatch or delivery, a process which involved extra hauling and the provision of standing room.

In connection with the applicant's siding traffic, the railway company had to specially provide points and signals, and the levers which worked them were required only for such traffic.

The railway company charged the applicants, on traffic to and from their siding, rates the same in amount as the rates charged as station to station, or collected and delivered rates, as the case may be, on similar traffic using the Halstead Station.

Upon an application to the Commissioners under Section 4 of the Railway and Canal Traffic Act, 1894, to determine what was a just and reasonable rebate to be made from the rates so charged to the applicants, the Court found that, in respect of the applicant's siding traffic, the Colne Valley and Halstead Railway Company did not provide the accommodation nor render the services, or any of them, for which station and service terminals were chargeable, but that they rendered certain other services in respect of that traffic, namely, some clerkage, shunting and signalling, for which a payment ought to be made to them. The Court held that a reasonable and just allowance or rebate to be made from the rates charged to the applicant, in the circumstances above described, would be so much of each rate as is not applicable to, or charged for, conveyance, less the following sums—

(1) A sum for clerkage equal to 30 per cent of the charge the railway companies make in any rate as a station terminal at the Halstead end ;

(2) A sum for shunting equal to the station terminal at the Halstead end ; and

(3) In respect of the cost of signals, being a cost bearing the same proportion to the cost of all the signals in the siding signal box, as the number of siding levers bears to the whole number of acting levers in that box, multiplied in each case by the average number of times they are respectively daily worked, such sum as the cost so ascertained works out at per ton of the siding traffic.

The case of *Vickers, Sons & Maxim v. Midland Railway Co.* (11 R. & C.T.C. 249), is also of considerable interest in this connection. Here the applicants were the owners of sidings which connected their works at Sheffield with the railway of the Midland Railway Company, and the applicants complained that in respect of traffic passing to or from such sidings, they were charged rates of the same amount as were charged to traders whose similar traffic was dealt with at and made use of the Midland Railway Company's goods station at Sheffield, and they applied under Section 4 of the Railway and Canal Traffic Act, 1894, for a rebate in respect that the railway company did not in the case of the siding traffic provide station accommodation or perform terminal services.

The railway company admitted the equality of the rates, but



denied that the rates charged on siding traffic included any charge for station or service terminals at Sheffield. They contended that the Commissioners had no jurisdiction to entertain the complaints, on the ground that the majority of the rates complained of were within the railway company's powers of charge for conveyance and terminals at one end only, and that the remainder of the rates complained of included charges for services at or in connection with sidings.

Here the Commissioners held that there was evidence that the rates in fact included terminal charges, and that the applicants were entitled to a rebate of the whole service and one-quarter of the station terminals.

### HOW TO MEASURE THE RATE CHARGEABLE.

When fixing up a siding agreement it is always wise to have regard to the rates chargeable from the railway station nearest to the proposed siding and any other works in the same district.

There should be no difficulty in ascertaining what are the rates chargeable from any of these other points because, as was shown in Chapter XV (page 225), a railway company is bound to keep its rates books open to the inspection of any interested party.

Sir Frederick Peel, in the case of the *Birchgrove Steel Co. v. The Midland Railway Co.* (5 R. & C.T.C. 229), said: "Under the 14th Section of this Act of 1873 a trader is entitled to know from a railway company, and, if necessary, to have the information put down in the rate book, how much of a rate is for the movement along the line, and how much is for other expenses; and he is also entitled to know as regards these other expenses the nature and details of them. As to what the nature of an expense is, that speaks for itself. If there is an expense, for which a charge is made in the rate, which is of a distinct character, it ought to be particularized; and as to the details of the expenses, of course details may include a great many things. But there is one detail that a trader is especially concerned in knowing, and we must remember that this 14th Section was passed in the interests of the trader. He is concerned in knowing in what way an expense affects the amount of the rate; in other words, he is entitled to know what portion of a rate is attributable to the expense which the company allege is charged for in the rate. Now, as to the degree of minuteness with which



these details should be given in the rate book, that must depend upon circumstances."

In another case—*Cairns v. North Eastern Railway Co.* (4 R. & C.T.C. 221), which was an application to enforce the dissection of certain rates—Mr. Commissioner Miller said: "The mistake that the railway company make in this matter is this: they seem to have imagined that they owe no duty to the customer apart from his statutory right to have this information placed on the rate book under an order to be obtained from us. That is not so; the customer is entitled to have this information quite apart from the statute, which only provides a remedy in cases of need. The legislature seems to have thought that, inasmuch as this information is very varied and may be voluminous, it would be too much to require the railway company to give it in the rate books as of course, and with regard to every rate, when perhaps it might not be required in a majority of instances; but, on the other hand, as every customer is entitled to the information, the legislature seems to have considered that if it became necessary for any one to take proceedings for the purpose of getting it, it would be for us to decide whether the information was of sufficient importance for us to require them to give it to the public. And under these circumstances, we have laid down the general rule, whenever the information has been asked for by customers and given we will not under ordinary circumstances consider that the company is bound to do anything more; but that, as a general rule, and subject to any particular considerations, whenever proper information has been refused the company must be treated as not having performed their duty to the customer, and the question will then arise whether they should not be obliged to put the whole of these details out in their rate book for everybody to see; but in no case does the customer's right to information depend upon the question whether it is such that the public should also have it, although our power to grant relief may be so limited in any particular case."

True it is that those sections of the Railway and Canal Traffic Act, 1873, and the Railway and Canal Traffic Act, 1888, which made it obligatory upon a railway company to disintegrate a rate when called upon to do so, have been repealed, but the Railway Rates Tribunal have jurisdiction, under Section 28 of the Railway Act,

1921, to determine this matter of due and proper charges on private siding traffic, and disintegration of exceptional rates can be obtained hereafter under Section 40 of the Railways Act, 1921 (see page 342). There should, therefore, not be any difficulty in ascertaining what are the rates chargeable to any places in the immediate neighbourhood of the proposed siding. These can be taken as a measure of the rate chargeable to the proposed new siding.

Lastly, it may be opportune to refer to the case of the *Lanarkshire Steel Co. v. The Caledonian Railway Co.* (6 Sc. Sess. Cas. (5th Ser.) ; 41 Sc. L.R. 41), where certain railway companies jointly issued a notice intimating an increase of rates for the carriage of coal. The steel company, whose works were served by one of these railway companies, objected to the increase of rates as being unreasonable, and demanded that it should be withdrawn. The railway company, however, rendered their monthly accounts for carriage to the steel company upon the basis of the increased rates. The steel company paid the accounts as charged under protest, and, as they alleged, upon the understanding that their right to claim a rebate for the increase should not be prejudiced, and that, if ultimately it should be found that the railway companies were not entitled to increase the rates, the increased charges should be returned. The steel company did not lodge a complaint in respect of the increase of rates with the Railway and Canal Commissioners, but seven companies, which were substantially in *pari casu* with the steel company lodged such complaints, with the result that in October, 1901, the Railway and Canal Commissioners found in the case of each of the seven complaints lodged that the increase in the rates was unreasonable, and directed the railway companies to discontinue to charge the increased rates. In consequence, the railway companies ceased to charge the increased rates. The steel company alleged that they had not proceeded with their application to the Commissioners in reliance on representations by the defendants, that their claims would not be prejudiced in consequence.

Here the Court held that, even assuming that the determination of the Railway and Canal Commissioners did not proceed upon the special circumstances of the particular cases brought before them, but was equally applicable to the circumstances of the steel company, an action brought by the steel company to recover from the railway

company the amount paid in respect of the difference between the old rates and the increased rates during the period in which the increased rates were charged was incompetent, and the railway company gained the day.

The moral to be drawn from this case is that the aggrieved trader should not depend upon any oral agreement with a railway company to pay back to them any rates paid under an increased scale, provided it is decided that such rates are not legally chargeable, but should do what the law decrees—that is, file an application in the Railway and Canal Commission Court for an order enjoining the company to desist from charging such increased rates. Then there can be no doubt that the railway company concerned must disgorge the amount if it is decided by the Commissioners that the increased rates have been improperly charged.

## CHAPTER XXII

### ON THE PRIVATE OWNERSHIP OF RAILWAY ROLLING STOCK

DOES it pay to own one's own railway rolling stock? It all depends. It all depends upon the nature of the business in which the prospective owner is engaged, the class of traffic to be handled, and where.

#### PRIVATE OWNER'S WAGONS FOR INTERNAL WORK.

There is a certain amount of traffic to be moved by railway inside practically every factory which possesses a railway siding connection, but if the amount of such traffic is small—say only a wagon load or two per week, and the loading and off-loading is to be done the same day—it will probably be found cheaper to use a suitable main line wagon for the purpose and pay the appropriate charge to the owning company. Most of the railway companies are ready and willing at any time to hire one or two of their vehicles to any reputable firm for internal use, provided they have an assurance that the vehicles will not be put to any improper use, and this is a great convenience to every owner of a private siding as, in the case of one with only a small amount of traffic to move, it makes it unnecessary for him to purchase rolling stock of his own, and, in the case of the other with a large amount to handle, it enables him to supplement the stock which he already has for this work. And the rate of hire is only a nominal sum per day—varying according to the class of vehicle required for use.

Should the requirements of the business—as well as economy—demand that the factory must be possessed of its own railway rolling stock, it is obviously unnecessary—save in very exceptional cases where special and valuable traffics are to be dealt with—to have such expensive and well-equipped vehicles as are required for running on the main line. This is not to say that anything is good enough for internal use. In the performance of an internal railway service there is sometimes just as much need for care as in the operation of a main line service—especially where the traffic to be conveyed is valuable, and there is a frequent crossing and re-crossing of the railway lines by the workpeople. But what is meant is that

one need not (for example) have a wagon which is to be used only within the works fitted with a brake on each side of it—and so on, in accordance with the specification for fittings of main line stock. Again, dummy-buffered wagons are now prohibited for use on the main line, but for some classes of internal work—e.g. for the conveyance of fuel and ashes—they are quite suitable.

The intending purchaser will do well to send out inquiries to half a dozen wagon builders and second-hand wagon dealers as to what classes of vehicles they have available and the prices of them before definitely committing himself, as sometimes bargains are obtainable in this way.

### THE LAW AS TO MAIN LINE VEHICLES.

So far as main line traffic is concerned, the trader's actions are limited by law, which must first be taken into account.

In the first place, then, by Sub-section 3 of Section 6, Fifth Schedule to the Railways Act, 1921, it is decreed that—

The company shall not be required to provide trucks for the conveyance of merchandise in respect of which the provision of trucks is not included in the rate for conveyance, nor for the conveyance of lime in bulk or salt in bulk or any merchandise liable to injure trucks, but in all such cases traders shall be entitled to provide their own trucks.

Provided that any dispute between the company and a trader as to whether any specific kind of merchandise is liable to injure trucks may be referred to the Rates Tribunal, but on any such reference it shall lie on the trader requiring the merchandise to be carried to show that such merchandise will not injure the trucks.

As a matter of fact, the schedules of standard charges have been fixed by the Railway Rates Tribunal to cover the provision, by the four groups of railways to which the Schedules apply, of vehicles for the conveyance of any and every article classified in Classes 5 to 21, and, so far as the Scottish portion and North-eastern section of the L. & N.E. Railway Company, and the Scottish portion of the L.M. & S. Railway Company are concerned, for the provision of trucks for the conveyance of traffic in Classes 1 to 4 also.

By Sub-section 2 of Section 6 of the Fifth Schedule to the Railways Act, 1921, it is further provided that—

Where, for the conveyance of merchandise other than merchandise in respect of which the rates for conveyance do not include the provision of trucks, the company does not provide trucks, the charge for conveyance shall be reduced by such sum as the Rates Tribunal determine.



Then there is the case of *Spillers & Bakers v. G.W. Railway Company*, reported on page 60, where the Appeal Court held that the Railway Clauses Consolidation Act, 1845, does not impose any obligation upon a railway company to convey traders' merchandise in their own trucks; and that, although under the Railway and Canal Traffic Act, 1854, the railway company must afford facilities for conveying a truck as a separate article on payment of a reasonable rate, a trader is not entitled as of right to have his own loaded truck forwarded as a means of forwarding the goods therein contained upon payment of tolls based upon the rates applicable to such goods either with or without abatement; and that the railway company's Rates and Charges Order Confirmation Act, 1891, while exempting the railway company from providing wagons for mineral traffic and making provision for such circumstances, does not impart a positive obligation as to all traffic other than mineral traffic.

### THE POSITION IN A NUTSHELL.

In a nutshell, therefore, the position is this: So far as some traffics are concerned—traffics in Classes 1, 2, 3, and 4 of the classification—generally speaking, the railway companies are under no obligation to provide vehicles for their conveyance, and hence the trader has the right—nay, the obligation—to do so. But this notwithstanding, the railway companies do quote—in many instances at any rate—both “Owner's wagon” (O.W.) and “Company's wagons” (C.W.) rates for the conveyance of traffics which they are under no obligation to carry in their vehicles—e.g. coal, stone, lime, etc.—and it is in these instances where the trader has to exercise his mind as to whether it will, or will not, pay him to run his own wagons.

Let us take an hypothetical case and assume that the difference between the “O.W.” rate and the “C.W.” rate for the conveyance of a certain commodity between A and B is 1s. per ton. X can buy a suitable 12-ton wagon for the carriage of the traffic for (say) £120, and he can be sure of getting one round trip per week out of it. The result would work out somewhat as follows—

	£	s.	d.
Depreciation of one 12-ton wagon reckoned on a 12-year life at £120			
Annual cost of repairs and renewals (say)	10	—	—
	6	—	—
Cost per annum	£16	—	—
= (say) 6/2 per week.			

Earning power of wagon  
 = 1 round trip per week (12 tons at 1/- per ton)  
 = 12/- per week  
 = a saving of 5/10 per week.

Of course, £120 is a big price to pay for a railway wagon, and one round trip per week is a very small average—the owner's aim should be to get at least one and a half times, if not double, that number—but the estimate is purposely kept on the right side so as not to mislead.

It will be appreciated from what has been said that practically everything depends upon a quick transit and the rapidity with which a vehicle is loaded at the forwarding end and unloaded at the destination end—for obviously it would not pay to purchase a vehicle for main line work if it were likely to be held up *en route* or delayed for a fortnight or more by the consignee—and in this connection one must obtain the co-operation of both the carrier and the man at the other end.

## CHAPTER XXIII

### COASTWISE DEPOTS AND COASTWISE CARRIERS

CONVENIENTLY-SITUATED depots around the coast are extremely useful, because in many instances they serve this double purpose : they enable the manufacturer of non-perishable goods to effect the expeditious delivery of his standard lines and, incidentally, help to lower the cost of distribution to an appreciable extent ; for which very good reason a chapter on their establishment and management is included in this volume. Indeed, omission to treat of this subject would leave the book incomplete, because depots, as a rule, come directly under the charge of the traffic manager, and the reader of these pages has, therefore, a right to know how they are established and controlled. First, as to their usefulness.

#### THE ADVANTAGES OF A DEPOT.

The prime advantage of a depot is that it enables the manufacturer to keep a stock of his goods at the point where the depot is situated for the immediate execution of any orders coming to him from that particular district. Thus, a Scottish coffee manufacturer with a depot at either Newport, Cardiff or Swansea can execute his South Wales orders with very little (if any) delay ; in the same way a Liverpool dry goods manufacturer with a depot at, say, Southampton, is able to effect the expeditious delivery of any orders which come to him from along the South Coast.

Another great advantage is that well-stocked depots around the coast give the manufacturer a certain amount of security against industrial unrest. If, for example, the Liverpool railway men are out on strike, and it is impossible to dispatch goods by railway from that city, the Liverpool manufacturer with a depot at Southampton is able to execute his South of England orders—coming from, say, Brighton, Reading, or even London—from that southern port. Similarly, if there is a labour dispute in the South of England, and transits are disorganized in consequence, the Southampton manufacturer is able to draw from his Manchester stock for the execution of his Midland orders ; and so on.

## HOW TO ESTABLISH A DEPOT.

No golden rule can be laid down for the establishment of a depot : it is entirely a matter of seeking out for oneself that particular individual or firm who or which is prepared to render the services required to be performed in this connection, but the name of a reliable agent can generally be obtained from the columns of either the *World's Carriers* or the *Railway and Shipping Journal*, which are the two leading monthly journals devoted to the carrying trade, and which contain a list of the leading road and coastwise carriers, the majority of whom are ready to act in this capacity.

It is possible to find in many places individuals who are prepared to act not only as stock-keepers, but as selling agents as well ; but the more general rule with firms having their own salesmen is to arrange for the services of a depot keeper only to be performed, i.e. the cartage of the traffic from the quayside on the arrival of the steamer and the storage of it pending distribution instructions, and the subsequent delivery of the goods to either local buyers or to the local railway station for conveyance inland, or both, as directed.

Naturally, a depot-keeper's charge varies according to the number and extent of the services which he is asked to perform—some do not do the cartage from the quayside, but merely the storage and delivery ; indeed, in some cases, as in the case of goods consigned to the Free Trade Wharf, London, there is no cartage to perform, the goods being stored in the agent's warehouses on the wharf—but it is always best to have either an inclusive charge for the performance of all the services required, or a separate charge for each of them, definitely fixed beforehand.

## HOW TO CONTROL A DEPOT.

The method of controlling the stock at a depot, and the deliveries from there, also depends upon individual requirements. Some firms allow their representatives to give a depot-keeper instructions to deliver goods against orders which they—the representatives—have secured, and some allow the customers themselves—or a select few, at any rate—to have open orders on a depot-keeper to deliver any goods which they may require ; but in the great majority of cases the rule is for the depot-keeper to act on no instructions save those issued to him by the firm itself from the head office.

"Open" orders have led to abuse—unscrupulous representatives have misused them, as also have financially embarrassed customers—with the result that most firms now insist on every order being passed for credit by them before it is executed. Obviously, a firm is by this means able to keep its customers within their respective fixed limits of credit. Nor does this plan of referring all orders to the head office involve any great delay, because suppose, for example, a traveller takes an order in Plymouth on Monday for execution from the Plymouth stock and the order has to be referred to London; if it is posted the same evening it will arrive in London first thing the next morning (Tuesday) and delivery instructions can be issued to the depot-keeper the same day, to arrive in Plymouth on the Wednesday morning, on which day the goods will be delivered. Indeed, if the order is an urgent one, the depot-keeper can be instructed by wire to deliver the goods the very same day, i.e. on the Tuesday; but in either case the goods will be delivered sooner than if they had to be sent direct from the factory.

A small post card instruction form, as specimen shown below, will be found useful and economical for this work. These post cards should be printed and bound in book form, interleaved with

## DELIVERY ORDER.

To \_\_\_\_\_ Date \_\_\_\_\_ No. 55

*Please deliver as under from the stock of our goods in your possession :*

LEW. WALLACE & SON. \_\_\_\_\_  
per pro.

No. of Bags.	Description.	Name and Address.

thin but strong transparent paper, and written with the aid of a piece of carbon paper so that a permanent record of the orders that have been issued may be kept. It is necessary, too, to have





## WEEKLY STOCK SHEET.

*Agency.*

Lew. Wallace & Son's Stock for Week ending 19

## RECEIPTS AND DELIVERIES.

[illegible]

for use in this connection a "Weekly Stock Sheet," as accompanying specimen. One of these is filled in by the depot-keeper each week to show what stock he has received, what deliveries he has effected, and the balance still on hand, which latter summary should, of course, agree with the manufacturer's own record.

### GOODS CAN BE BOOKED "THROUGH" BY SEA AND RAIL.

Then, quite apart from the question of stocks, these coastwise carriers can be utilised very extensively for the economical transportation of inland merchandise—at any rate, by those manufacturers whose factories are on or within reasonable distance of the seaboard. For, not only do they—as a rule—carry from port to port at much lower rates, but they will arrange through rates to cover both the sea and the rail transit. Thus, coasters sail regularly between London and South Wales, and through rates, from London to Cardiff by water and thence by rail inland, to, say, Merthyr, can easily be fixed up with the shipping company concerned. Rates thus arranged are always much below the direct rail rates (for the reason that it is far cheaper to convey by water than by rail, there not being any track to keep in repair nor staff to provide), and when goods are sent forward at a through-out rate in this way, the consignor or consignee (whichever pays the carriage) receives his account for the entire charge in just the same way as though the goods had been forwarded direct by rail at a through rate. In other words, the coastwise carriers and the railway companies, for the purpose of this rail and water-borne traffic, act in conjunction with one another.

Naturally, it takes longer to transport goods by water than by rail—obviously, the weather affects coastwise transit; and it takes longer for a coasting steamer to call at an intermediate port than it does for a train to halt and shunt at an intermediate station; but the difference in time is not so great as one would expect, between some points especially. Thus, goods shipped in London on Saturday morning are delivered in Leeds at the latest on Tuesday morning; the journey from London to Wales is a matter of three to four days; from Bristol to London a week, the vessel making two or three calls on the way; whilst the journey from Bristol to Scotland—Glasgow—is accomplished in three days.

Each firm of coastwise carriers has its own separate "Sailing List," and these are always to be had for the asking.

There are sailings to and from most of the large ports either daily or three times a week, i.e. every other day, and so well has the service been developed that some of the sea carriers now issue "Rates Lists" of through "C and D" rates for groceries, provisions, and sundries in exactly the same way that the railway companies quote their rates. For example, Rates Lists are issued for the conveyance of provisions and groceries, etc., by water from London to Leeds, Bradford, Halifax, Huddersfield, Todmorden, Accrington, Church, Darwen and districts, Brierfield, Burnley, Colne, Doncaster, Blackburn, Cherry Tree, Mill Hill, Keighley, and numerous other places. But, generally speaking, the rates are special to the firms to whom they are quoted.

The procedure to be followed when sending goods coastwise is precisely the same as when sending them by railway—the sender has merely to fill up a "Forwarding Note" giving the consignee's name and address, etc., and hand this to the shipping company with the goods at the time of dispatch. On this declaration form there is a notice to the effect that coastwise goods will only be carried subject to the conditions of conveyance set out in the continental steam bill of lading, which conditions relieve the carrier of liability for loss, etc., to the goods during transit, but all goods can be insured through the shipping company undertaking the conveyance of them for a nominal fee.

### THE METHODS OF THE COASTWISE CARRIERS.

The methods of these coastwise carriers are very similar to those of the railway companies. That is to say, goods properly declared on the "Forwarding Note" are invoiced to their destination on a "Manifest" which is very much like a railway "Way Bill."

On arrival of the ship at the port of discharge, say Bristol, the consignees of a local consignment are advised on proper "Advice" forms, whilst "through" goods—consignments, that is to say, which have to go forward by railway to interior stations—are handed over to the railway company with a "transfer" form, and an advice sent to the firms concerned, in order that they may give prompt instructions for disposal.

Traffic which requires a rapid transit obviously cannot be sent

by water—at any rate, not if the distance is a long one ; but if time is not a great consideration these coastwise carriers can be most effectively employed. Indeed, the writer knows two very large firms—who respectively manufacture coffee and biscuits—who, through the medium of these coastwise carriers, have been able to open up depots at various ports around the coast, and thus extend their operations to practically every part of the United Kingdom ; and several others who, but for the existence of these facilities, could not possibly compete successfully with their fellow manufacturers.



## CHAPTER XXIV

### MOTOR CONVEYANCE AND DELIVERIES

It is not at all likely that motor vehicles will ever displace the railways in the same way that the railways displaced the old stage coaches, but it is undeniable that as practical and efficient instruments for the distribution of some classes of merchandise they have come to stay, and for this reason a short chapter on their use will be helpful to the student of transportation problems.

#### THE PRINCIPAL ADVANTAGES OF MOTOR TRACTION.

The principal advantage of a motor vehicle is that—in respect of his short distance traffic—it makes the manufacturer independent of ordinary outside carriers—which in times of labour strife, counts for much—and enables him to effect the delivery of his goods as and when he wishes. The delays, breakages and pilferages incidental to and inseparable from railway transit are avoided because, of course, the goods are placed into the motor vehicle at the factory—or depot as the case may be—and not touched again until they are unloaded at the customer's premises; and so far as regards the goods delivered straight from the factory to the buyer, the cost of packing is reduced to a minimum.

A certain well-known jam manufacturer used to be sorely troubled over the question of safe transit. Notwithstanding substantial packing and very clear marking, the breakages used to be enormous and the settlement of the claims on the railway carriers unsatisfactory. But since he has adopted motor delivery vans these vexations have disappeared entirely. He now simply packs his preserves in lidless cases which can be filled and emptied much more easily. Indeed, some manufacturers do not do any packing at all. They have vans to suit their particular requirements, so that the goods can be placed in the specially constructed compartments at the factory and ride there in perfect safety until the customers' warehouses are reached.

Then, again, the delivery radius of a well built and powerful

motor van is extensive. There is one big biscuit firm with a depot in Bristol—whose stocks, by the way, are conveyed thence by water—from which, by means of one of these vehicles, it makes daily deliveries within the city and to places situated twenty and thirty miles outside the boundaries. There is another firm of millers in Plymouth which is similarly situated and delivers from its local stock to Bude and back in a day. And so one might go on giving example after example, but the foregoing will suffice.

It would be foolish to say that the cost of delivering by motor is in every instance as cheap as, or cheaper than, the cost of delivering by rail. Were that so motor conveyances would be universally adopted. But the actual first cost is not the only consideration. A great—and frequently the *determining*—factor is the *service* rendered. Expeditious delivery is, at any rate in some cases, a thing which *must* be guaranteed, even though it costs a little more, especially where there is keen competition to be met.

Wherein, then, lies the virtue and value of the motor-van? In brief: in the performance of that service which, strictly speaking, is not within the true province of the railways; i.e. the service of cartage and delivery as distinct from the service of conveyance.

As everyone knows, the railways were originally designed to act as haulage ways (or iron roads) for privately-owned vehicles—carriages primarily—from one town to another; then heavyweight traffic which had hitherto been horsedrawn along the high roads began to pass along the lines; and lastly, lighter parcels were conveyed—and in some cases—delivered, but this delivery work was never contemplated by the promoters of the railways, nor is it prescribed for, as are the other services, in the Acts of Parliament governing the railways.

And it is there—that is to say, in the performance of the cartage work, either before or after the railway conveyance or for the distribution of goods within a restricted area—that the motor-van can undoubtedly be of infinite value when properly employed.

True it is that occasions do arise—for instance, during the period of a strike of the railway employees, like that of the year 1911; or to meet some other special emergency: the catching of an export steamer with an urgent parcel, or to avoid a mill or factory having to close down for the want of a particular piece of machinery required to replace a sudden breakdown—when it may be found absolutely

necessary to undertake the conveyance by motor vehicle irrespective of the distance and the cost of carriage by this means, but obviously emergency measures will never do as a guide for the general conduct of the business of transportation and distribution.

The cost per ton mile varies according to the nature of the business in which the vehicle is used—obviously a miller can deliver more cheaply than (say) a biscuit manufacturer, because his full loads and separate deliveries are heavier and his stoppages therefore fewer—and it is for that reason impossible to give a scale of even approximate delivery charges which would act as a reliable guide to prospective users, but figures based on work actually done by a variety of owners can always be obtained from first class commercial motor manufacturing firms.

### HOW TO RECORD RUNNING COSTS.

It is essential for the owner of a commercial motor van to keep an accurate record of the running costs, because without this he is unable to tell what is the actual worth of the vehicle to him. This record is not very difficult to keep ; on the contrary, it is comparatively easy to work out the cost per ton-mile, even though the load is split up into an indefinite number of deliveries.

Suppose, for example, a van starts out with a 5-ton load of goods to be delivered in ten different lots at various points of the journey, the gross ton mileage is ascertained in this way—

						T.	c.	q.	lb.		Ton miles.
At the end of the 1st mile it delivers	1	5	0	0	=						5-00
" " 2nd " "		15	0	0	=						3-75
" " 3rd " "		2	0	0	=						3-00
" " 4th " "		10	0	0	=						2-90
" " 5th " "		4	0	0	=						2-40
" " 6th " "	1	5	0	0	=						2-20
" " 7th " "		4	0	0	=						.95
" " 8th " "		10	0	0	=						.75
" " 9th " "		2	2	0	=						.25
" " 10th " "		2	2	0	=						.125
Total						5	0	0	0		21-325

It is simply a matter of deducting the quantity delivered at each stop from the quantity comprising the original load and setting down the figure thus arrived at as the ton-mileage using decimals

as being the more convenient. The decimal fraction of a ton is, of course, easily arrived at by dividing by 20. Thus, in the example shown above, at the end of the fourth mile 2 t. 2 c. 0 q. 0 lb. had been delivered, leaving a balance of 2 t. 18 c. 0 q. 0 lb., so we set down the 2 as two ton-miles straight away. Then we divide the 18 by 20 and get '90 as the answer, and set that as the decimal fraction. Again, at the end of the sixth mile 4 t. 1 c. 0 q. 0 lb. had been delivered, leaving 19 cwt. still in the van. By dividing 19 by 20 we get '95 as the answer, so we set down that figure as the ton-mileage.

In the above example it is assumed that the deliveries are made at even distances of 1 mile each, but in practice, of course, it would happen that uneven distances would come into the account. Here is a detailed example where fractions of a mile occur—

A van starts out with a 5-ton load—

					T.	c.	q.	lb.		Ton Miles.
At the end of the 1st mile it delivers	1	0	0	0	=					5-00
"    "    next $\frac{1}{4}$ "    "		5	0	0	=					1-00
"    " $\frac{1}{8}$ "    "		10	0	0	=					1-875
"    " $\frac{1}{4}$ "    "		5	0	0	=					8125
"    "    * $\frac{1}{2}$ miles    "		2	2	0	=					6-00
"    " $\frac{1}{8}$ mile    "		5	0	0	=					575
"    " $\frac{3}{8}$ "    "		2	2	0	=					1-575
"    " $\frac{1}{8}$ "    "	2	10	0	0	=					0-5
					5	0	0	0		17-3375

At each point the thing to do is to find out how much load the vehicle was carrying. This load = (original load)—(sum of load or loads deposited up to the delivery before). Then multiply the mile, or fraction of a mile, by the weight the vehicle was carrying the distance in question. In the above example, at line 5 (\*) the van has set down 1 ton, 5 cwt., 10 cwt., and 5 cwt., 2 tons in all, and is, therefore, loaded with (5-2) tons = 3 tons; and 3 tons over two miles gives six ton miles.

Assuming the cost of the maintenance of the vehicle (including, of course, depreciation, insurance, tyres, wages, petrol—in short, everything) to be £530 per annum, this would give £10 3s. 10d. as the week's proportion, and if the week's ton mileage were (say) 300, this divided into the week's cost (i.e. £10 3s. 10d.) would give 8-15d. as the cost per ton-mile.

**STEVENS & NEVILLE, LONDON**

## MOTOR VAN DELIVERY SHEET

Driver's Name: *T. Harris.*

Date: Dec. 7th, 19..

Van No. : 25

Name.	Address.	Cases Tate's Cubes.	Bags No. 1 Gran.	Dema- rara.	Received by
<i>Calvert, F.</i>	<i>Commercial Road</i>	3	2	1	
<i>Blain, W.</i>	<i>Stepney</i>	5			
<i>Williams, F.</i>	<i>Cambridge Road</i>		3	3	
<i>Jones, H.</i>	<i>Hackney Road</i>	10	2		
<i>Smith, B.</i>	<i>Shoreditch</i>	10	5		
<i>Robinson, C.</i>	<i>Aldersgate Street</i>	10			
	Total	38	12	4	

Driver's Signature.



**RECORDING THE DELIVERIES.**

The method of recording the deliveries must be determined by the particular requirements of the firm concerned. If they are to be effected direct from the factory, delivery sheets as accompanying specimen will be found useful. These should be made out in duplicate by the shipping office and the driver's signature obtained on the carbon copy to show that he has actually loaded up, or checked the loading up of, that number of packages for delivery. If, on the other hand, the deliveries are to be effected from a depot, a similar sheet can be used, only, of course, the delivery instructions have to be passed through the branch office.

## CHAPTER XXV

### RIVER CRAFT : THEIR UTILITY AND MANAGEMENT

PROBABLY the earliest effective means of transport devised by man took the form of some kind of river craft. The very simplicity of the principle involved would lead to its use even by men of very limited intelligence. The discovery of the buoyancy of light articles in water, it is fair to assume, led very soon to the invention of rafts, coracles, and such precarious craft, and these in turn to the canoe and more modern types. In ancient times such was the necessity for having available water communication that the population all over the world was most dense along the courses of the principal navigable waterways. It was not, however, until the idea of the interchange of commodities or commerce had taken root that canoes and other small craft were superseded by vessels of large cargo capacity.

Prior to the introduction of railways some kind of river traffic was the only economical method of inland transport, and the accessibility of a country's resources was largely dependent on the distance for which its principal rivers were navigable. There are many obvious instances: the trade in furs, etc., up the Hudson in Canada, the rubber trade on the Amazon in Brazil, the trade along all the length of the Danube, etc., while the inaccessibility of Central Africa from the west, prior to the building of railroads, was due to the cataracts by which the rivers of that neighbourhood descended to the coastal plain from the plateau, rendering navigation beyond a certain distance impossible.

Even now that the railways in this and other countries have reached such a pitch of efficiency as at the present day, undoubtedly the cheaper method of conveyance of large quantities of material, between suitable points, is by water. From the point of view of the large manufacturer, whose factory is situated on a navigable waterway, it is much cheaper to take delivery of big parcels of raw material direct from the quay by barge than to have them railed from the dock side, and when overside delivery from the actual import steamer is practicable, a still further reduction in cost results. It is the same with outward cargoes of packed goods for coastwise or export steamers, when it is much more economical, if

the tonnage warrants it, to send out parcels by barge for overside delivery, thus greatly reducing handling and other charges. Even when overside delivery is not possible, it is often found a paying proposition to make up a barge load of small consignments and to send it to some suitable distributing centre along the docks, rather than to rail or motor the separate lots.

### MODERN TYPES OF RIVER CRAFT.

At the present time river craft, broadly speaking, can be divided into three types, as follows—

(a) DUMB BARGES. These craft predominate numerically, especially the old wooden type. They and their more up-to-date iron counterparts, sacrifice appearance to utility. They are for the most part shallow drafted, flat-bottomed craft of anything from about 50 to 150 ft. in length and of about 10 to 25 ft. beam. Except for a few feet at bow or stern devoted to the accommodation of the crew, the whole length of the boat is devoted to one large hold, the aim being to get the greatest possible tonnage capacity for the size of the craft. The only more or less mechanical appliances carried are a hand winch in the bows, a couple of hand-pumps, and, of course, a wheel or tiller aft. The former is used for warping through the docks, but, otherwise, these dumb barges are absolutely dependent on steam barges or tugs for getting about.

(b) DERRICK BARGES. This type of river craft is comparatively rare. It has essentially the same characteristics as the dumb barge, with the addition of a steam winch and a mast and derrick for working cargo, worked by a small boiler housed in a stokehole, right for'ard or right aft, which robs the hold of as little space as possible. It is strange how seldom these craft are met with, as they are extremely useful either when working overside steamers or for picking up package materials off the quays. The steam winches are of course fitted with powerful warping gear, so that these craft can get about the docks with much greater rapidity than the dumb barges.

(c) STEAM OR OTHER MECHANICALLY PROPELLED BARGES. This last class is, of course, by far the most valuable. They have usually all the advantages of derrick craft without their disadvantages, being not only self-propelling, but powerful enough to tow three or four barges at a time. They are usually capable of the useful

speed of about 6 knots, their engine room being right aft and taking only about 10 or 20 ft. off the possible length of the hold.

Were it not for the big initial outlay, probably every barge fleet would consist entirely of steamers, but as there is a very considerable difference between the costs of steam, derrick, and dumb barges, most owners adopt one of two plans in the formation of their fleet. Either, like most of the purely carrying companies, they get a large fleet of dumb barges and work them to and fro with a couple of small powerful tugs, or, like most manufacturing concerns owning their own fleets, they go in for a fleet consisting of about half and half steamers and derrick or dumb barges, and manage their towing in that way.

### THE SELECTION OF CREWS.

Though barging may not be considered a highly skilled occupation, it is advisable to select a particular type of man for the work. Doubtless the old type of waterman, with his excellent local knowledge, his good handling of ropes, and his often weird and inaccurate nautical knowledge, is a suitable man to employ on the casual system, but for a more or less permanent servant, the barge owner requires a type of man with more education and more initiative, who will act in a crisis intelligently and not by rote. For this, he needs a man with good local knowledge and experience of the kind of work required, but preferably with the wider views induced by deep sea experience and a knowledge of the outside world. As a general rule, for instance, the old type of waterman did not know north from south on a compass, with the result that he was content to look on slight fog as an act of God, which condoned his cargo being delayed or even missing shipment, whereas a man with a good knowledge of compass work would be able to work his way to his destination by setting a series of courses by familiar objects on the river, if the fog were not completely opaque.

It is much easier to train young apprentices with the ideal in view than to pick up fairly suitable men, so to speak, ready-made.

The knowledge it is necessary to instil into the minds of these future bargemen is considerable and varied. It is not sufficient for them to know how to steer, how to handle ropes rapidly and efficiently, splicing, knots, and the regular navigation lights; they must also be able to recognize all the lights and signals, by day, by

night, and in fog, in operation along the waterways of their particular neighbourhood ; they must know the lights to be exhibited by craft in all conceivable circumstances, and be thoroughly conversant with all the regulations for the prevention of collisions ; they must know their respective duties at all times and on all occasions, and must realize the extent of their individual responsibilities in respect of the care and maintenance of the craft on which they are employed. A working knowledge of the compass is also required, together with some idea of the courses between the various points on their usual runs. In addition, they must know the capabilities and idiosyncrasies of the various craft in the fleet on which they may be employed ; so that, in effect, they may know how to act for the greater security of their persons, their craft, and the cargoes they are carrying, in any circumstances that may arise.

The best type of young man to get in the first place is the kind who have from their childhood been used to handling dinghies and such small craft, and who have a natural bent for the kind of work required. They should be informed of the nature of their duties and of the knowledge which they are expected to acquire, and should be periodically tested or examined as to that knowledge orally, if not even in writing, so that in due course the employer may promote them to more responsible positions with every confidence in their ability to fulfil the job assigned to them. The tests, of course, take the form of a series of simple questions on the subjects enumerated above, increasing in difficulty with the length of time the apprentice has been employed.

## METHODS OF PAYMENT OF RIVER CRAFT MEN.

The methods of payment of men employed in these types of craft vary tremendously even in the same neighbourhood, but, broadly speaking, they fall into two main classifications—

1. THE PAYMENT OF CASUAL MEN. These men, employed for the most part not by manufacturing concerns but by lighterage and other carrying companies, are either employed by the tide or by the day, irrespective of the number of trips made or of the tonnage carried. In the latter case they are paid overtime for any night tide work.

2. THE PAYMENT OF PERMANENT CREWS. There are a great many different systems in vogue for the payment of these more or



less permanent employees. One, most generally in operation, is the payment of a fairly large standing weekly wage, covering tide work at all hours of the day and night, and stipulating the attendance for an ordinary eight hours' day. This is sometimes varied by the introduction of a bonus system with a somewhat lower standing rate.

Another commonly employed system, a variant of the above, is where the men are paid a lower standing wage for regular daily attendance between the usual hours, say 8 a.m. to 5 p.m., irrespective of whether their craft move during that time or not, and, in addition are paid by the hour, at a considerably higher rate, for any work on night tides or after the regulation hours. This system again may be modified by the payment of bonus with a lower standing wage.

The payment of bonus takes all kinds of complicated forms : it may be paid, at varying amounts according to rating, on the tonnage carried, on the number of trips made light or loaded, and, in addition, on the tonnage derricked, and, where such is legal, on any working of cargo in the hold by the bargemen themselves. It may be paid on one or both of the first two counts only, or on all those quoted above, with additional bonus for steam barges for any craft towed.

There are even some companies where the standing wage is entirely dispensed with, and the crews are paid solely according to the tonnage they carry. There are, for instance, cases where the captain of a barge is paid a fairly large amount, usually about a shilling per ton, for every ton carried, and pays his own crew out of the money thus earned.

In cases where bonus is paid it usually constitutes the major part of the total weekly wage, and, in consequence, has a beneficial effect on the way in which the work is done, making for greater speed and efficiency in every way. Bargemen, indeed, are on the whole extremely highly paid, seeing that their work is not generally considered to be a highly skilled occupation.

Both the standing wages and the bonus vary according to the rating of the recipient, captains, of course, receiving the highest rates and engineers the next, though, in most cases, the rate of pay also varies with the type—steam, derrick, or dumb—of the craft on which the bargeman is employed, and sometimes even a further

distinction is made according to the various capacities of the barges of each type.

## RECORDS REQUIRED TO CHECK WAGES EARNED.

1. MANIFESTS. For the payment of wages according to the latter system, the most important item to be recorded is, of course, the tonnage of each cargo.


With the cargoes of packed goods outwards from a works this record is easily made up merely by totalling the weights on the various consignment or shipping notes. An outward manifest is made out giving this figure, the name of the craft, and the loading date ; in the case of composite cargo, for two or more destinations or for different steamers, it is advisable, for the sake of future reference, to quote the separate items on the manifest before totalling the weights.

For inward cargoes of raw materials, the recording is slightly more difficult, since it is usually the case that a barge is picking up only the part of some large parcel, perhaps part of a 1,000 ton lot ex a certain steamer. In these circumstances the number of packages should be checked into the barge, and the total tonnage ascertained approximately by averaging the cargo at so much per bag or package ; this unit figure is, of course, only arrived at by experience or by accepting the master porter's weights and dividing by the number of packages. In cases where each package has been weighed separately, there is, of course, no necessity to resort to the above approximation. The checker supplies the captain of the barge with a rough manifest as a shipping note, quoting the number of packages and the approximate tonnage, and also supplies the wharfinger's office with the checking slip and any other special information regarding that particular cargo. This office, in turn, makes out the inward manifest, which is used for record purposes, giving the most exact tonnage possible, and any information *re* damage, etc. The illustration on page 312 shows the form such a manifest should take.

These manifests inwards and outwards form the nucleus of the information that is required for the correct payment of crew's bonus, as it is known in the office which passes these wages in which cases the crew have derricked the whole or a part of their cargo, or worked in the hold, and so forth.

## INWARD MANIFEST

Barge.....*Blue Billy*..... Date.....*8th Jan*.....19..  
 Loaded at.....*Kings*.....Dock  
 Date of Loading.....*4th Jan*.....19..

No. of Pkgs.	Description of Cargo	Marks	Ex Steamer
1874 Bags	East African Cotton Seed  Ex Quay weighed Tonnage 122 38 Bags damaged by wet	 B V	s.s.....

2. WORK CARDS. A simple method of recording the work done by the crews is to have each crew make out their own work cards, specially prepared for the purpose, setting out the tonnages they have carried and the overtime worked, and any other additions to which they are entitled, these cards being carefully checked by the barge superintendent with the aid of the manifests and other information at his command.

A good form for the cards to take is something like this—

.....*Smith, Jones & Robinson, Ltd.*.....  
 Week ending.....19..  
 Name..... Barge..... Rating.....

Day	Tonnage	Derricked	Slung or Stowed	Tows	Trips	Over-time	Remarks
Mon. .							
Tues. .							
Wed. .							
Thur. .							
Fri. .							
Sat. .							
Sun. .							

3. LOG BOOKS. The chief difficulty in connection with such cards is the checking of the overtime, and the best remedy is to insist on the captain of each barge keeping a log of the work done each day; for this purpose he is supplied with a log book with detachable counterfoils, in which he enters in duplicate exact details of the work his barge does, stating times of commencing and

finishing loading or discharging, times of arrival and departure, giving particulars, with their cause, of any extraordinary delays, in addition to particulars of towages and any exceptional occurrences, the tonnages carried, and his barge's drafts with such cargoes. The detachable page of his log, covering the period in question, is handed in each week with the work cards, and thus affords an invaluable check on the authenticity of the latter.

## THE CARE AND MAINTENANCE OF RIVER CRAFT.

1. GENERAL. In the case of fleets manned by casual labour, no responsibility as to the condition of the craft attaches to the successive crews who work the craft about, except to the extent of keeping them reasonably clean. As most of the craft manned in this way are old wooden dumb barges of no great value, even the owner takes scarcely more than a casual interest in their physical state, unless they begin to leak or something else occurs which renders them unfit for carrying cargo. In many firms, however, these craft are subjected to a general overhaul, in graving dock or on a grid or slipway, every couple of years or so, and running repairs such as caulking, repairing hatches, etc., are carried out by the firms' own carpenters, whenever the barges happen to be available at headquarters.

It is a very different matter, however, for up-to-date iron craft, with regularly employed crews, who have necessarily a good deal of time on their hands while their barge is loading, discharging, or waiting tide during their regular hours. One of the main duties of the men during their periods of comparative leisure is to keep the hull and decks of their craft, assuming these to be iron, as free as possible from corrosion and other deterioration by scraping and repainting the deck plates and all the area possible of the hull between the water line and the gunwale. For this purpose the paint should be carefully chosen—some variety whose anti-corrosive powers have been subjected to rigorous tests being selected—and should be applied only when the surface of the plate has been thoroughly scraped, as application on top of the previous rust rather stimulates than hinders further corrosion. With steam or derrick barges, the crews are, of course, responsible for keeping the engines and winch clean and well oiled, and generally in the best of working order, as far as lies in their power, and for keeping

the mast and derrick from getting too dry and opening out. In addition the whole of the craft must, of course, be kept scrupulously clean in every particular, the decks and hatches being regularly washed down, woodwork all varnished or grained, and brasswork polished ; cleanliness, again, being a great preventative of corrosion or rot.

2. REPORTING OF MINOR DEFECTS. All mishaps, defects, or failures in any part of the vessel's gear must be reported at once to headquarters, both in order that such deficiencies may be corrected as soon as possible, and with the object of transferring the responsibility for any consequences arising out of them from the captain to the management, by putting them in possession of the exact circumstances. For instance, burst tubes, broken teeth in the cog wheels of the winch, defective valves, signs of wear in the mast or winding wires, or the discovery of water on the ceiling of the hold, etc., all these may have serious consequences. The winch or winding wire defects may cause serious injury or death to the men working in the hold, the tube will probably render the boat unfit at least for towing, so that other arrangements have to be made, and so forth. All of this merely serves to indicate that it is expedient for the captain of one of these craft at once to inform his owners of any defect he notices or of any mishap that may occur, however trivial it may appear at the time.

Information of minor repairs not of an urgent nature is best obtained by a weekly report from the captain of each craft, and from the engineers of the steamers, as to their general condition, in which a statement is made of any repairs that may be required, such as general overhauls of winches, the location of slight knocks in the engines, caulking and lagging work, etc., together with a list of any repairs that have been carried out during the previous week.

Such repairs as are enumerated in the weekly reports, in addition to minor running repairs, should be carried out by the firm's own staff of fitters and shipwrights—such a personnel being essential to any firm running a large fleet of river craft. The firm's fitters would also see that the boilers of the steam craft were cleaned at regular intervals and periodically subjected to an examination by a Government inspector.

3. DRY DOCKING. All river craft, moreover, should be given a



thorough overhaul internally and externally in graving dock at least every other year, when the hull should be examined carefully, defective and missing rivets replaced, dented plates faired, weak or badly fitting plates renewed, and the bottom and bilges scraped and repainted. At the same time the engines of steam barges should be overhauled and, if necessary, completely opened out, the decks should be repaired where necessary and the coamings straightened, while the inside of the bilges should be thoroughly cleaned out and re-washed and the sides of the hold painted. In short, this period in dry dock should be used to correct all the deficiencies which occupy too long a time for it to be possible for the repairs to be carried out while the barge is in regular use, or which were sufficiently unimportant to be held over till then.

A separate record should be kept for each barge, giving the date, brief particulars, and the cost of all repairs carried out, together with details and cost of repairs carried out in dry dock.

4. REPORTING OF COLLISIONS AND OTHER ACCIDENTS. In work of this nature numbers of minor accidents and collisions are inevitable and in this connection a further grave responsibility attaches to the captain of each craft. Any collision or other accident should be reported at once by 'phone to the management, a written report following at the earliest possible opportunity. In this report full details must be given of the names and owners of craft concerned, the damage if any, the exact circumstances of the case, and the names and addresses of any neutral witnesses. This must be done, however slight the damage may appear, and whichever party is to blame. Its importance cannot be exaggerated. The firm must be in full possession of the facts before they are in a position to formulate a claim or deny or admit liability. There are cases in the knowledge of the writer where a delay of two or three days—a week-end or some such period—has led to the loss of a clear-cut case; the defendants merely argue that if the alleged damage occurred on such and such a date it is curious that they have not been in possession of the facts until the present time, four days later; such being the case they can only repudiate liability. And for the plaintiffs nothing remains to be said.

It is a good plan to keep a record of all such mishaps, with the cost of repair on each side, the name of the captain concerned, etc., for future reference. This account is the more useful since, at any

future time, it gives the owner corroborative information as to the dependability or otherwise of any particular captain.

5. STORES. Included in the captain's and engineer's weekly reports should be a statement of stores received during the previous week, together with details of stores required. An exact record should be kept of the stores issued to each barge, with the date of such issue, so that upon a repetition of any item on a former order it may be seen at a glance whether the latter order is a reasonable one. In this case also, of course, the cost of each lot of stores should be recorded, so that this item as well may be added into the cost of running the barges.

6. FUEL CONSUMPTION. The first part of this—the fuel record—is a relatively simple matter and entails only a kind of double entry being kept, where the weight of coal received, in wagons or in whatever way the fuel comes in, is set off against the smaller items delivered to the various craft, the two sides of this record, of course, balancing. From this record extracts are made, weekly or over any period that is preferred, showing the coal delivered to each craft during that period.

From these periodical statements, it is a very sound idea to draw up a comparison of the fuel consumption of the various craft over a longish period, say six or twelve months, when, of course, it should follow that craft of approximately the same type and working the same river area should have consumed fuel in proportion to the number of trips worked during the period under review.

This comparison is very useful since, if the coal consumption of any particular barge is in proportion considerably higher than that of other barges of a similar class, there is usually found to be a very good reason for it. Either there is something radically wrong with the steaming properties of the barge, which thus ascertained can be remedied for the future, or a change of engineers will prove effective.

From these records the coal consumed per ton of cargo carried can be easily worked out, the fuel cost per ton carried being added to the other running charges.

STANDING ORDERS. For the guidance of crews, owners should draw up and issue a list of standing orders, which will cover almost every eventuality. These orders should lay down hard and fast rules as to lights to be carried and signals to be given; should

indicate clearly the responsibilities of the various ratings, especially in connection with towing ; that fore preventor stays and other safety apparatus should be kept in use continuously, and that the anchor gear should be tested every month or so, irrespective of whether it is needed or not ; and, most important of all, that all accidents must be immediately reported to the management and at once confirmed in writing, thus leaving the captains no loophole for escape on that score. Any special local arrangements or extra precautions should also be included in the orders, so that if a captain were to disobey them and consequently do some damage, he would have only himself to blame.

## THE ORGANIZATION OF RIVER CRAFT WORK.

1. THE ALLOCATION OF CARGOES. The first feature of river craft organization is the allocation of the craft for the various jobs for which they are required. The light craft have so to be allocated, at least theoretically, that each barge on every occasion can load to its fullest capacity, and that at the nearest possible berth to the one in which the last cargo was discharged. Light trips are, strictly speaking, a waste of money, as fuel and wages and time are expended with no return. For that reason return loads should always be sought ; when an outward bound cargo has been discharged overside a steamer or on the quay at a certain part of the docks, every endeavour should be made for the return load for that barge to be obtained at as small a distance as possible from that point ; and, conversely, when a raw material cargo has been discharged at the works, that barge should, whenever possible, be loaded outward on her next trip. In practice, however, light trips are unavoidable and almost, in a sense, economical, because there is one thing even more expensive than light trips, namely, leaving any of the craft idle for any length of time. A compromise has, therefore, to be effected, as few light trips being made as is compatible with the continuous employment of all the craft.

There is another difficulty which confronts the owner who has a mixed fleet of steam, derrick, and dumb barges. The latter can only be used for raw material cargoes which can be loaded with a chute, or else in crane berths, or for obtaining overside delivery from ships which are using their own gear. There are also many outward cargoes of finished goods which have to be landed on the

quay, where cranes are non-existent or very expensive, or which are to be delivered overside the steamers of companies who expressly stipulate that derrick craft must be sent or overside delivery will not be possible ; in such cases, again, dumb barges, of course, must not be allotted for the loads. Again, there are many cases where it is advisable, from the point of view of economy, to send only self-propelled craft. For instance, when an outward bound cargo is destined for overside delivery at two different parts of the docks consecutively ; when the loading or discharging berth is only going to be available at certain states of the tide, and the craft will have to get in and out with all possible dispatch ; and when it is merely a question of discharge at a greater distance than usual from the loading berth. In all the above cases, were a dumb or derrick barge to be employed, a steamer would have to waste time attending on her.

2. TOWING. The allocation of steam barges for the more distant jobs is the basis of economy in towages. In this way steamers are able to do the necessary towing, without waste of time and fuel by having to go beyond their destination to drop a dumb or derrick barge and then return. Also, of course, the towing, when a number of craft are moving on the same tide, should, if possible, be allotted to those steamers whose destinations are approached directly by locks and not by mere tidal entrances, so that in the event of any delay they will still be able to reach their discharging berths.

3. DAILY POSITION STATEMENT. It is a very good plan in the case of firms whose craft are continuously employed to keep a daily record of the workings of all the craft. This can conveniently be done by entering each morning on a form, with a margin inscribed with the names of all the various craft, the position and working of each for that day, opposite the name ; it is also useful to enter as well the date on which the cargo that is being worked was loaded. This statement should be drawn up on a sheet on which the names of all the different craft in alphabetical or some definite order are printed down the left-hand side, something after the form shown on page 319.

This record, filed daily, is extremely useful for future reference, giving as it does the position of any particular craft, up to a certain time at least, on any past date. It is also of great assistance to the management on the actual day of issue, affording, as it were, a bird's



.....*Smith, Jones & Robinson, Ltd.*.....

Date.....5 . 1.....19..

## DAILY STATEMENT

Name of Craft	Position and Working	Loading Date
..... <i>Blue Billy</i> .....	At..... <sup>4</sup> <i>King's</i> .....Dock, loading Cotton Seed, ex. ....s.s. <i>Mayfair</i> ..... etc.	4 . 1 . 28

eye view of the positions of all the craft at once, and helps very materially with the arrangement of the towing, etc., on the subsequent tide, if the working of the craft is dependent upon the use of tidal entrances.

4. WEEKLY RECORD OF TONNAGE CARRIED. From the manifests, or work cards after checking, a statement can easily be drawn up every week of the tonnages of the various commodities handled by the various craft. This record is made up, giving: Name of craft, description of cargo, tonnage, total tonnage for barge. The sum of these total tonnages gives a figure for the number of tons moved by the whole fleet during the week in question, and, in addition, of course, the total tonnage of each commodity carried by the barges during that period can very readily be obtained, so that it is very little trouble to obtain even an annual review of the work done by the barges as a whole, or to split it into its component parts.

5. RECORD OF WAGES COST PER TON. By comparing this tonnage record with the wages paid to the various crews, it is a very simple step to ascertain the wages cost per ton, covering the whole fleet or each barge, for the movement of any kind of cargo. From this comparison can be deduced the economy effected by the use of a certain size or type of craft for any particular load, which is likely frequently to recur. From this same source the actual "all in" cost can readily be obtained by adding in the costs of fuel stores and equipment, repairs, depreciation, etc.

The above statement, when tabulated, assumes something of



the following form for the particular craft or commodity under review—

Month	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Total
Wages Cost.													
Repairs and Renewals													
Graving Dk.													
Stores, Fuel, etc. . .													
Insurance .													
Depreciation													
Overhead Charges .													
TOTAL .													

The total tonnage carried over the year of all commodities or of one particular kind of cargo is readily obtainable from the manifests of cargo carried during that period. The figure for the total cost is divided by this tonnage figure to obtain the average cost of conveyance per ton of cargo.

It is advisable, however, to get out a cost at frequent intervals, say each month, so that if this figure is showing a marked tendency to increase, the item responsible can at once be picked out and an investigation made as to the cause of its unusual dimensions, and if the accretion is seen to be avoidable, steps can be taken to keep the cost of that particular item as low as possible during the subsequent period.

### CONCLUDING REMARKS.

As has already been said, river traffic work is, in a great many cases, still much cheaper than rail transport. It is true that with the coming of railways its pristine importance is somewhat decreased, but, nevertheless, there is no reason to anticipate that it will diminish any further for some time to come now that rail transport has more or less settled down, a century after its initiation. River traffic is not in any great danger from the direction of road transport either, as the latter is very expensive for consignments of big tonnage. But more efficient organization means a lower cost of conveyance, and in this lies the ultimate salvation of river traffic.

## CHAPTER XXVI

### THE STOWAGE OF RIVER CRAFT

THE word "stowage" is usually employed to designate the packing of cargo into the hold of a vessel for transportation, and all the complicated ramifications of that art, but, obviously, in its application to river-craft work the term undergoes considerable modification, as these latter craft are only to be underway with the cargo for the matter of an hour or two, and on arrival at destination are usually discharged without delay.

The main considerations in the stowage of any kind of cargo in barges or river craft are as follows: Firstly, so to allocate the cargoes that the craft shall be loaded to her fullest safe capacity, whenever possible; this entails stowing with as little waste space as is practicable; secondly, to arrange the cargo, if not all for the one port or other destination, so that it will best meet the discharge requirements; lastly, and the most important item of all, to arrange the packages constituting the cargo in such a way that they, their contents, and the framework of the boat cannot suffer any damage or deterioration during transit.

### PRELIMINARY PRECAUTIONS.

As these small craft are in the habit of conveying cargoes of all kinds and descriptions, it is essential that on all occasions the hold shall be thoroughly brushed up and the ceiling made as clean as possible before commencing to stow a fresh cargo. For instance, a barge that had just carried a cargo of liquid oil in casks could never be used for loading a new cargo of (say) bags of meal without the ceiling being first brushed over with sawdust, or even scraped, according to the state of the packages in the previous cargo.

No packages should ever be stowed so that they are forced up against the ribs or stringers of the barge's hold by the weight above, as this invariably leads to breakage.

For such short voyages as these craft make there is no necessity for packing up all the small spaces, which are unavoidably left, with dunnage, as is the case with ocean-going vessels, small chocks or

wedges usually proving adequate to prevent the packages shifting when the craft is under way.

With ocean-going steamers, the master is responsible in the respect of seeing that his ship is not loaded with weighty cargo beyond her capacity. With these small craft even it is advisable to put this responsibility on the shoulders of the one man who should best know the capacity of his craft ; in other words, it is a good idea to make the captain solely responsible, not for the loading or stowing of his boat, but for the extent of such loading.

### **STOWAGE OF BULK CARGOES.**

To be absolutely accurate, the term " stowage " does not find a place in the consideration of the handling of bulk cargoes, but all such cargoes must be " trimmed." This trimming serves a double purpose: in the first place, it allows of the maximum amount of grain or such material being got into the hold under hatches ; and, secondly, it allows of the craft being loaded without a list, and slightly down by the stern, which is always the best trim for these small crafts' steering qualities to be brought out.

On the rare occasions when it becomes necessary to keep part of a bulk cargo separate from the rest, or to load a craft with part bulk and part bags, an efficient separation must be made, and for this tarpaulins will usually be found both convenient and effective.

In the case of bulk oil carriers, whose tanks are divided into several separate compartments, though the cargo, in a sense, trims itself, it is advisable to trim the craft by regulating the quantity of oil in one or two of the for'ard tanks, again to ensure the craft being in the best possible position for answering her helm.

### **THE STOWAGE OF BAGS.**

In considering the stowage of bag cargoes into river craft, it is not necessary to refer in any detail to the method of stowing the bags one on top of another, as with such short periods the question of providing special ventilation does not arise.

The bags, then, should be stowed fore and aft right across the boat and the tiers built up directly by placing the second tier half-bag over the first one and stowing the wing bags on edge. A start should be made with two or three tiers simultaneously, and, when

stowing in port order, no parcel, however small—within reason—should be put in a single tier.

If the cargo is made up of bagged commodities of different weights, the heavier packages are best stowed in the bottom of the boat and the lighter on top, if the cargo is to be delivered on the quay at the destination. If, on the other hand, the cargo is to be delivered overside, it is better to mix the stowage, so that the ship's stevedores can choose their own method of stowage in this respect for the longer voyage.

Cargo hooks should not, on any account, be used when stowing bagged materials, as the small rent thus made may easily lead to the loss of a large part of the contents of the bag. If the bags are in fairly good condition, loading them with nippers or down a chute, when practicable, imposes less strain upon the fabric than if they are slung.

### THE STOWAGE OF BARRELS, CASKS, ETC.

The first essential principle in the stowing of barrels and casks is that they shall be placed bung up. This, of course, is an obvious precaution to save leakage from the most vulnerable part of the package, but is more important still in view of the fact that the junctions of the hoops should, in a properly constructed package, be in line with the bung; and that the sections of the head are vertical, when the bung is up, thus being in a position to withstand a far greater pressure from above than if this strain were applied across the grain. To attain this object—to stow the cask bung up, that is—is a task of no great difficulty, and only requires to be remembered to be carried out.

The other principle is that, if possible, the centre of the bilge, as being the weakest part of the cask, should be kept as free as possible. The only way in which the bilge is rendered almost entirely free is by stowing the casks on what is known as the half-cask, bilge and cantline principle. This method, however, means that every other tier upwards projects half a cask beyond its predecessor on the end tiers, so that a great deal of dunnage would be required to support the projecting casks. In the class of work with which this article deals, there is neither time nor space to spare for the use of such close packing, and it is therefore best to fall back on the whole cask, bilge and cantline method, which, though it imposes slightly more

strain on the bilges, has the advantage from the point of view of space. Moreover, since craft of this type can rarely hold more than from four to seven tiers of this type of cargo in height, the pressure from above is not so great as to warrant extra precautions.

The casks are stowed all across the ceiling, fore and aft and bung up, and the boat is usually entirely floored out before the second tier is begun. This is built up on the first tier in the same thwartship line, the casks resting on the sides of the bilges of two of the casks on the lower tier. Especial care should be taken that the packages on the bottom tier are level and not rising up at all in the wings, as in the latter case the wing casks would be subjected to an undue strain.

When stowing casks, etc., into barges, it is not necessary to bed the bottom tier elaborately, but sometimes the use of a few wedges or chocks under the wing casks is advisable.

The stowage of drums is similar to that of casks, both flanged and corrugated drums being stowed on the whole-cask principle, the former type being stowed preferably with the flanges only in contact with one another.

It is often advisable to stow small numbers of kegs or drums of small capacity on their ends, in a single tier, where the space permits. No hard and fast rules can be laid down for small parcels of odd packages, these coming, naturally, under the heading of broken stowage.

## THE STOWAGE OF CASES.

In loading packed goods outwards from the factory into river craft great care must be taken with the stowage, especially if these cases are not very stoutly constructed in comparison with the weight of produce contained.

In the first place, if the cases are to be slung at all, they must be slung in the proper manner; that is to say, they must be built up in tiers from the bottom upwards in the form of a truncated pyramid, the lateral tiers decreasing one case at a time from (say) five or six boxes in the bottom tier to three in the top one, the cases being laid flat on their bases and not on sides or ends. On no account must boxes be slung in the form of a square, or the sling will nearly always break the edges of the four corner cases. There is naturally a tendency on the part of those unfamiliar with the



work to make up slings in this incorrect manner, because several more boxes can be slung at a time. Saving time and labour in this way, however, is invariably false economy.

The best method of all, when it is practicable, is to load the cases, the numbers varying according to their weight, on to stout wooden trays or skips, which are themselves slung, by means of cargo hooks, by the four corners, the chains clearing the cases, so that no strain whatever is imposed upon the latter.

In stowing cases every precaution should be taken to ensure that the bottom tier is level; it is much better to miss a box altogether than to put one in that is slightly sloping up towards the wing of the hold, since this nearly always means that the edge of this tilted case is broken by the box in the tier above. The second tier should be built up on the first one in such a way that no case on the second tier rests wholly within the edges of the corresponding case below, and it is even preferable to arrange the upper tiers so that the boxes in them each rest partly on two cases in the tier below instead of building them up exactly on top of the others.

It is usual to stow the heaviest cases on the bottom tiers, filling up gaps with smaller cases as occasion arises, and to put the lighter packages on top; but when a cargo is being stowed for overside delivery it is preferable to stow all the heavy cases in tiers by themselves, and the light cases, cartons, etc., on separate tiers by themselves. This enables the ship's stevedore to pick out the appropriate cases for bottom stowage for the longer voyage.

It is often tempting to fill in the small spaces in the wings by stowing cases on their sides; but only the strongest of cases should ever be treated in this way, for, with at all fragile packages, undue strain is liable to be imposed upon either the bottom or the lid by the motion of the craft, with the result that the thin boards give way and the contents are lost or damaged.

## OTHER STOWAGE.

The stowage of bundles of planks or boxboards should always be started with the bundles fore and aft right across the hold. Each bundle should be stowed flat in its natural position—that is to say, on neither the sides nor ends of the boards constituting the bundle. In this way, even in the event of the ceiling getting damp or of

water coming over it, only the bottom board or two in each bundle can get damaged, whereas were the packages originally stowed on sides or ends all the boards would probably be rendered useless in the bottom tier of bundles.

The same principle, of course, holds good with bales or other packages whose contents are in the form of layers. It is sometimes a good plan to stow the wing bundles on their sides, so that in the same way, in the event of moisture running down the side of the hold, only a part of each package will suffer any damage.

The stowage of carboys or demijohns is a slightly less simple affair. The bottom tier is stowed diagonally from the centre of the hold towards the wings. If we take the case of a barge with a projecting keelson, for instance, the first carboy should be stowed at one end (say) right for'ard, on the starboard side against the keelson; the next one placed against the first, just aft of it; the third on the starboard side of the first two, as close as possible between them; the next three packages are stowed diagonally, one just aft of the second carboy up against the keelson, the next just aft of the third one laid down, and the last one continuing the same diagonal line towards the starboard bow. Succeeding rows are placed parallel to this last diagonal one and continued aft between the keelson and the wings on the starboard side. The port side is done in exactly the opposite direction, and a compact bottom tier is formed all over the boat. Succeeding tiers are built on the lower ones, so that the carboys of the second and other tiers come between the necks of two carboys, in a fore and aft line, in the tier below. Of course, the whole of the bottom tier is not, in practice, completed before the succeeding tiers are built up.

The number of different kinds of cargo loaded into river craft is, of course, very large indeed, and it is not possible to describe the methods of stowage for more than a few of the many kinds of packages, but from these few main types it is not difficult to deduce the methods of stowage of other similar ones.

### **BULKING AND DECK CARGOES.**

With the class of craft with which we are dealing there is very little deck space available, and it is unsafe to stow any cargo even in what there is, as it would restrict the movements of the crew when they are manoeuvring their craft.

Bulking, also, is only to be permitted under very special circumstances. It should only be allowed in summer and for day tide work, since, in bad weather, it is a very dangerous practice with craft which have so little freeboard. The extent to which most barges can be bulked is further restricted owing to the fact that the mast and derrick, when lowered, must be landed safely. With the so-called dumb barges bulking is not generally advisable, even in order that a complete parcel may be cleared, and however tempting the idea may seem, it should almost invariably be avoided.

### STOWAGE ACCORDING TO DISCHARGE REQUIREMENTS.

If a barge is being loaded out from the factory with a cargo for two or more different destinations, great care should be taken with the stowage, so that the craft shall be left on an even keel after each separate parcel has been discharged.

On the surface, the simplest method of achieving this result would be to stow the consignment that is to come out last along the bottom and to put the other consignments above this one in layers, ending with the first delivery being on top. Experience, however, teaches that, in practice, this method is to be avoided whenever possible; cases, of course, do occur when part of one parcel overlaps another to some extent, owing (say) to an unexpected increase in the orders for one port after the boat has been floored out. In practice, it very often occurs that a ship is held up or that a customer cannot immediately take delivery as per arrangement, with the result that if the barge's cargo has been loaded in strata, so to speak, and the delivery of the top parcel is prevented, the whole cargo is blocked in.

The general rule then is to "floor out" the barge according to the number of separate parcels in the cargo, and to build the packages up tier by tier, each parcel entirely separate. For instance, if a barge were due to deliver cargo overside two different steamers, the parcels being in the ratio of 2 to 1 in size, the smaller parcel would be stowed right across the hold amidships, and the larger one fore and aft. This case has the added advantage that, if any hitch occurs, the barge can be sent to either export steamer first. Often the loading is not nearly as simple as this, however, the cargo consisting of four or five distinct parcels. As an example, let us take the following hypothetical case.

A manufacturer from somewhere on the Manchester Ship Canal wishes to send the following parcels of packed goods to the destinations named, by barge to Liverpool, and thus to destination: 30 tons for Cork, 40 tons for Belfast, 60 tons for (say) Wexford, and 5 tons for delivery by cart to a customer in Liverpool. A barge capable of containing 150 tons of the cargo would be selected and loaded (say) on the Wednesday to arrive in Liverpool about mid-day on Thursday, so as to deliver the 5 tons to carts on that afternoon, to deliver the Cork parcel overside on Friday, the Belfast on Saturday, and to land the Wexford parcel on the quay for the next sailing. To achieve that result, Wexford should be split and stowed fore and after, Cork for'ard of amidships, with the Belfast consignment just aft of that again. The small parcel should, in this case, probably be stowed on top of Wexford, as it is not big enough to justify separate stowage on two or three tiers. Again, were it considered advisable to deliver the Cork shipment before the cartage was performed, the latter 5 tons could be stowed on a single tier, immediately for'ard or aft of the Cork parcel; but this habit is not to be recommended. As a general rule, it is not advisable ever to stow separately on a base of less than three tiers, so that room is left for the making up of the slings when discharging.

When a load is to be made up at different quays, it is best to follow the same principle; and also when a barge is sent to collect a rather insufficient cargo and it is hoped that additional material will turn up in that neighbourhood, as then again a choice can be made as to which part of the load shall be delivered first.

The most important point to keep in view in the stowing of river craft is to load them so that they are in suitable trim for steering. Theirs is a somewhat hazardous life, and the safety of boat, crew, and cargo frequently depends on the quickness of the helm. Mixed cargoes should, therefore, be stowed so that when the barge requires to move from one berth to another she is on an even keel or down by the stern. A barge down by the head may be considered out of control, and under such circumstances the cargo she has loaded is in jeopardy.



## CHAPTER XXVII

### BARGE DEMURRAGE AND LIGHTERAGE CONDITIONS

At every big port barging is bound to be incurred for some reason or other. In London, for example, a large proportion of both the incoming and outgoing traffic is conveyed to and from the ship's side by river craft; in Hull the quay facilities are few and inadequate to deal with all the imports and exports, and therefore barges have to be employed; also, of course, in Hull the seed crushing mills are situated up river, and hence it is essential to convey the seeds from the import steamer to the mills by water; and at Liverpool the conditions are very much the same: either dumb barges or small steam flats must be engaged to convey the imported produce to the consuming points and the exports to the outbound ships. It is the custom of each and every port of any size.

The conditions under which river craft can be hired are usually set out on the barge owner's rate quotation, but sometimes a dispute arises as to when the "free" period—the period, that is to say, covered by the rate—begins and ends, and it may be helpful to consider the decision in one or two test cases where this question cropped up.

#### A LIVERPOOL TEST CASE.

In the Liverpool County Court, in November, 1912, Joseph Forster, trading as the Standard Lighterage Company, sought to recover the sum of £44 6s. 3d., which, he asserted, was due for demurrage, from Mr. C. R. H. Harrison. The action was for the balance of account for freight and demurrage in respect of lightering steel billets from Liverpool to Garston. The matters in dispute were as to both the length of the demurrage and the rate charged. For many years it had been the custom in the port of Liverpool that demurrage was payable in cases of lighterage after seven clear working days had passed from the time the barge was alongside ready to be loaded. That was irrespective of railway company's occupation of docks or anything of that kind. This arrangement applied as to freightage unless a special rate was fixed to cover the risk of demurrage.



In this case the Judge held that plaintiff failed on the question of custom, the evidence being too unsatisfactory for him to say there was established a universal custom in the port of Liverpool, including Garston, that demurrage was payable after seven days. It was clear that a considerable amount of discretion was exercised by persons in the business. On the facts of the case, defendant was not responsible for the delay at Garston and was chargeable with eight days' demurrage at £2 2s. a day.

### A LONDON CASE.

In the City of London Court, in March, 1914, before Mr. Registrar Wild, a claim was made by the Thames Steamtug and Lighterage Company, Ltd., against the Phoenix Wharves Company for £1 demurrage on a barge. The barge was sent to Phoenix Wharf on 14th February, and discharged on 19th February. That was five days. The custom was to allow two clear days after the day in which the barge got alongside. The barge was not berthed until Monday, 17th February, and she was not unloaded until 19th February. There was two days' demurrage, for which they charged 10s. a day. Mr. Sherwood, who appeared for the defendant company, said the defendants could not guarantee a berth. The Registrar said he was afraid that was no excuse. Mr. Sherwood said they must follow their turn whenever they could. Just about the time in question there had been a lot of severe weather and barges were held back for a week. When the weather cleared all the barges came together, and they could only discharge one barge at a time. The Registrar: That is one of the misfortunes of war. Mr. Sherwood said there was only room for one barge, and they got the plaintiffs a berth as soon as they could. The Registrar said the defendants should have provided for that in their contract. Mr. Sherwood said that in quoting their price they did not guarantee the barges would be unloaded as soon as they arrived. The Registrar said the defendants could not take a hired barge and keep her because there was other business being done at their wharf. They could not keep a barge hanging about in the river. Mr. Sherwood said they unloaded the barges as quickly as they could. The Registrar said, if the defendants' contention was held to be good, they might have a hired steamer come to deliver certain goods, and when she arrived, there not being sufficient water for

her to lie at the wharf, the defendants would be excused. There must be judgment against the defendants for the amount claimed.

### GET A DEFINITE QUOTATION IN WRITING.

From the foregoing it will be seen that care should always be taken to secure a definite quotation in writing, not only as to the rate per ton for actual conveyance, but also how many days is covered by the "free" period. Each port has its own customs governing this as well as most other matters, and it is never safe to leave it to chance to decide when and under what circumstances demurrage on a barge will accrue.

### LIGHTERMEN'S CONDITIONS OF CONVEYANCE.

The necessity for having it very clearly set down in writing beforehand what responsibilities (if any) your lighterman will accept in respect of the goods he conveys for you in his vessels was well brought out in the case of *Rosin and Turpentine Import Co. v. B. Jacob & Sons* (C., L.T.R. 366).

### A TEST CASE.

Shortly stated, the facts of the case were these: In June, 1907, the plaintiffs were the owners of 1,000 barrels of rosin on board the steamship *Aeolus*, at West Woolwich Buoys. The defendants, who were lightermen, agreed to tranship the cargo from the *Aeolus* to a steamer bound for Newcastle. The plaintiffs placed 565 barrels in a lighter which was moored at some buoys off Deptford, and while at her moorings the lighter was sunk at night by collision with a steamer, and the barrels in question were either lost or damaged.

The plaintiffs, by their statement of claim, alleged that the defendants were lightermen and common carriers, and that it was their duty to deliver the goods in the like order and condition in which they had received them.

The defendants pleaded that they lightered goods on the terms of the following clause, which was printed on their invoices and memoranda—

The rates charged by B. Jacob and Sons, Limited, are for conveyance only, and every reasonable precaution is taken for the safety of goods whilst in craft; they will not be liable for any loss or damage, including negligence, which can be covered by insurance, and the shipper in taking out policy should effect same "without recourse to lightermen,"

as B. Jacob and Sons, Limited, do not accept responsibility for insurable risks.

The plaintiffs replied that, if the goods were carried on the terms alleged, the damage and loss were caused by the defendants or their servants negligently and in breach of the contract failing to take reasonable precautions for the safety of the goods whilst in craft, as the craft was improperly, and in breach of Art. 30 of the Thames By-Laws, 1898, left moored at night at moorings other than the usual barge moorings, and without the proper lights and appliances. They further alleged that in these circumstances the barge was unseaworthy, and that by reason of mooring where she did she had deviated from her voyage, and the defendants were therefore not entitled to rely on the exceptions in the contract.

### THE JUDGMENT OF THE HOUSE OF LORDS.

The case was carried to the House of Lords, where Scrutton, K.C., for the appellants, contended that if a carrier intends to contract himself out of his common law liability for negligence, he must use unambiguous language. Here the respondents said first, "every reasonable precaution is taken," and then went on to say, "they will not be liable for negligence," which were contradictory statements.

Bailhache, K.C., for the respondents, maintained that the clause was plain, simple, and unambiguous. It meant that the owner of the goods was not to have any common law right of action against the lighterman for negligence, but must protect himself by insurance. The clause spoke for itself, and the appellants had created the ambiguity of which they complain by their own ingenuity.

At the conclusion of the arguments their lordships gave judgment as follows—

The Lord Chancellor (Loreburn): My Lords: In this case there has been a difference of opinion upon the effect of a very short document, and most eminent authorities have read it in different ways. It really is beyond dispute that if a shipowner wishes to get rid of his legal obligations he must say so clearly, and the only question here is—has he said so clearly, or is this an ambiguous clause which gives him no protection? For my own part, I must say that in my view, if you read these words carefully, there is no contradiction, as there is no ambiguity. The first words are that

the shipowner takes all reasonable precautions for the safety of the goods, and the last words are that he will not be liable for loss or damage caused, among other things, by negligence. Substantially that means, "You must not suppose that we are careless people, but we will not accept liability; you must insure if you wish to be protected, both from our own and our servants' negligence." If the absence of a light, therefore, is to be regarded as unseaworthiness, then this clause equally exempts Jacob & Sons from unseaworthiness. I think there is no objection to a man saying that he accepts no risk and that the other party to the contract must insure, and that seems to me to be exactly what this clause says.

Lord Macnaghten: My Lords, I am of the same opinion. I am unable to find any ambiguity in this clause.

Lord Atkinson: My Lords, I agree. I am unable to find any ambiguity in this clause. To a person of ordinary understanding I think that it means "our practice is to be careful of other people's goods, and if you want to be protected you must insure."

Lord Collins: My Lords, I cannot say that in this case my mind is absolutely clear, but I am unable to agree with the decision arrived at by your lordships. It seems to me that the judgments of Bray, J., and the Master of the Rolls are right. I think that it is well established that people who desire to contract themselves out of liabilities should do it in clear, unambiguous language. I find in this case that the defendants in the first instance contracted on such terms that they accept liability for negligence. The clause is in the following terms: "The rates charged by B. Jacob & Sons, Limited, are for conveyance only, and every reasonable precaution is taken for the safety of the goods whilst in craft." That appears to me to be meant as an undertaking to use every reasonable precaution for the safety of the goods. In other words, these are words of contract. I agree that the words following are equally explicit. They say in one and the same contract that they expressly undertake liability for every reasonable precaution, and in the other part they say that they will be under no liability in respect of negligence. That appears to me to be ambiguity, and people who choose to contract in such ambiguous terms must take the consequences. I agree with the judgment of the Master of the Rolls.

Lord Shaw: My Lords, I cannot say that my mind was altogether made up until near the conclusion of the argument. Properly read, the words "every reasonable precaution" do appear to me as part of the general clause to be merely narrative, a statement of the general practice of this firm's business. That is succeeded by a clear and unambiguous statement as to damage for negligence, and that the proper remedy to be taken is insurance. That latter portion of the contract is clear from ambiguity, though the addition of the word "but" would have made the language clearer. I cannot see with Farwell, L.J., that there is any repugnance. It appears to me that it is the way in which mercantile men deal.

The judgment appealed from (i.e. the judgment of the Appeal Court which reversed the decision of the Court below, which held that the lighterage company were liable) was accordingly affirmed, and the appeal dismissed with costs.

### **INSURE YOUR GOODS.**

The moral to be drawn from the foregoing story is that anyone who hires a river craft to transport his goods in should insure his traffic against river risks—and these are not by any means negligible—with some reputable company, and so avoid losses of this kind.



# APPENDIX

## COMPRISING PARTS 3 AND 6 OF THE RAILWAYS ACT, 1921, AND THE RAILWAY RATES TRIBUNAL RULES

### PART III

#### RAILWAY CHARGES

##### *Constitution and Procedure of Rates Tribunal.*

20.—(1) There shall be established a court styled the Railway Rates Tribunal (in this Act referred to as the “rates tribunal”), consisting of three permanent members, with power to add to their number as hereinafter provided, and the rates tribunal shall be a court of record and have an official seal which shall be judicially noticed, and the rates tribunal may act notwithstanding any vacancy in their number.

Rates  
Tribunal.

(2) The permanent members of the rates tribunal shall be whole-time officers and shall hold office for such term not exceeding seven years from the date of their appointment as may be determined at the time of appointment and then retire, but a retiring member shall be eligible for reappointment.

(3) The permanent members of the rates tribunal may be appointed by His Majesty at any time after the passing of this Act, and from time to time as vacancies occur, and shall be so appointed on the joint recommendation of the Lord Chancellor, the President of the Board of Trade, and the Minister.

(4) Of the permanent members of the rates tribunal one shall be a person of experience in commercial affairs, one a person of experience in railway business, and one, who shall be the president, shall be an experienced lawyer.

21.—(1) The rates tribunal may appoint a clerk and such other officers and servants (subject to the consent of the Treasury as to number and not exceeding ten) as they may consider necessary for assisting them in the proper execution of their duties, and there shall be paid to the permanent members of the rates tribunal and to any such clerk, officer or servant as aforesaid such remuneration (including, in the case of such clerk, officers, and servants, superannuation allowances or gratuities on retirement) as the Minister, with the approval of the Treasury, may determine.

Appointment  
of officers  
and expenses  
of tribunal.

(2) Any such remuneration and any other expenses of the rates tribunal incurred in the exercise and performance of their powers and duties shall be defrayed by the Minister out of moneys provided by Parliament, but, so far as the aforesaid expenses are not met out of the amount recovered by way of fees, they shall, on demand, be repaid to the Minister by the amalgamated companies as part of their working expenses in such proportions as the rates tribunal may determine.

22.—(1) The rates tribunal may, from time to time, with the approval of the Lord Chancellor, the Lord President of the Court of Session, and the Minister, make general rules governing their procedure and practice and generally for carrying into

Procedure.

effect their duties and powers under this Part of this Act, and such rules may, amongst other things, provide for—

- (a) the awarding of costs by the tribunal, but so that in proceedings before the rates tribunal at the instance of any company or person, other than disputes between two or more railway companies, the tribunal shall not have power to award costs unless they are of opinion that either the application or claim or complaint or defence or objection, as the case may be, is frivolous and vexatious ;
- (b) the reference of any question to a member or officer of the tribunal, or any other person appointed by them, for report after holding a local inquiry ;
- (c) the number of members of the tribunal to constitute a quorum ;
- (d) enabling the tribunal to dispose of any proceedings before them, notwithstanding that in the course of the proceedings there has been a change in the persons sitting as members of the tribunal ;
- (e) the right of audience before the tribunal, provided that any party shall be entitled to be heard in person, or by a representative in the employment of the party duly authorized in writing, or by counsel or solicitor ;

and may, subject to the consent of the Treasury, prescribe a scale of fees for and in connection with the proceedings before the tribunal.

(2) The Minister shall give to the rates tribunal such assistance as the tribunal may require, and shall place at the disposal of the tribunal any information in his possession which he may think relevant to the matter before the tribunal, and the Minister shall be entitled to appear and be heard in any proceedings before the tribunal.

(3) The rates tribunal shall annually make a report to the Minister of their proceedings under this Act, which report shall be laid before Parliament.

Sittings.

23. Subject to the provisions of this Part of this Act and to the rules made thereunder, the rates tribunal may hold sittings in any part of Great Britain in such place or places as may be convenient for the determination of the proceedings before them. The central office of the tribunal shall be in London.

Additional  
members of  
tribunal.

24.—(1) There shall be constituted two panels, the one (hereinafter referred to as the general panel) consisting of thirty-six persons, twenty-two being nominated by the President of the Board of Trade after consultation with such bodies as he may consider to be most representative of trading interests, twelve being nominated by the Minister of Labour after consultation with such bodies as he may consider most representative of the interests of labour and of passengers upon the railways, and two being nominated by the Minister of Agriculture and Fisheries after consultation with such bodies as he may consider most representative of agricultural and horticultural interests, and the other (hereinafter referred to as the railway panel) consisting of eleven persons nominated by the Minister after consultation with the Railway Companies' Association, and one person nominated by the Minister to represent railways and light railway companies not parties to the Railway Companies' Association.

(2) A member of a panel shall hold office for such term, not exceeding three years from the date of his appointment, as may be determined at the time of appointment, and then retire, but shall be eligible for reappointment.

(3) If a vacancy occurs amongst the permanent members of the rates tribunal, or if any permanent member of the rates tribunal is incapacitated by prolonged illness or other unavoidable cause from attending meetings of the tribunal, then pending the filling up of such vacancy or during such absence,

(a) in the case of the president, the Lord Chancellor may appoint a person to act in his place ;

(b) in the case of either of the other permanent members, the Minister may appoint a member of a panel to act in his place, the person so appointed being selected from the general panel or the railway panel according to the qualification of the permanent member in question.

(4) Whenever for the purposes of any particular case or proceeding the rates tribunal either upon application by any of the parties or otherwise so request, or the Minister thinks it expedient, there shall be added to the rates tribunal two additional members nominated by the Minister from the panels, one selected from the general panel and one from the railway panel.

In selecting a member from the general panel, regard shall be had to the particular class of case or proceeding to be heard, so that, as nearly as may be, the person so selected shall be conversant with and have knowledge of the technicalities that may arise in such particular case or proceeding.

(5) Any person appointed under the provisions of this section shall, for the purposes of any proceedings in respect of which he may be so appointed, be a member of the rates tribunal and shall, subject to the provisions of this Part of this Act and to the general rules made thereunder, exercise all the powers and functions of a permanent member of the rates tribunal.

25. The decisions of the rates tribunal shall be by a majority of the members including the additional members, and shall not be subject to review otherwise than under the provisions of this Part of this Act relative to appeals from the rates tribunal.

Decisions.

26. Section seventeen of the Railway and Canal Traffic Act, 1888, shall apply in respect of appeals from the rates tribunal in like manner as it applies to appeals from the Railway and Canal Commission :

Appeals.  
51 & 52 Vict.  
c. 25.

Provided that, in cases where an appeal lies, the question whether the appeal is to be to the Court of Appeal or to the Court of Session shall be determined in accordance with general rules made under this Part of this Act.

### *Jurisdiction of Tribunal.*

27. Any existing functions of or powers exercisable by the Railway and Canal Commission shall, in so far as they are exercisable by the rates tribunal by virtue of this Act, cease as from the appointed day hereinafter mentioned to be functions of or powers exercisable by that Commission.

Transfer of  
powers of  
Railway and  
Canal  
Commission.

28.—(1) The rates tribunal shall, in addition to any other powers conferred upon them under this Part of this Act, have power to determine any questions that may be brought before them in regard to the following matters—

Functions of  
tribunal.

(a) The alteration of the classification of merchandise, or the alteration of the classification of any article, or the classification of any article not at the time classified, or any question as to the class in which any article is classified ;

(b) The variation or cancellation of through rates ;

- (c) The institution of new, and the continuance, modification, or cancellation of existing group rates ;
  - (d) The variation of any toll payable by a trader ;
  - (e) The amount to be allowed for any terminal services not performed at a station, or for accommodation and services in connection with a private siding not provided or performed at that siding ;
  - (f) The reasonableness or otherwise of any charge made by a railway company for any services or accommodation for which no authorized charge is applicable ;
  - (g) The reasonableness or otherwise of any conditions as to packing of articles specially liable to damage in transit or liable to cause damage to other merchandise ;
  - (h) The articles and things that may be conveyed as passengers' luggage ;
  - (i) The constitution of local joint committees and their functions and the centres at which they are to be established.
- (2) The powers of the rates tribunal under paragraphs (b) to (f) of this section shall not be exercisable until the appointed day.

#### *Classification of Merchandise.*

Classification  
of mer-  
chandise.

29.—(1) The classification of merchandise for the purposes of this Part of this Act shall, in the first instance, be that determined by the committee appointed under section twenty-one of the Ministry of Transport Act, 1919, and that committee shall have power to settle such classification as if they had been empowered for that purpose by that Act, and, notwithstanding anything contained in that Act, shall continue in existence until they have settled such classification.

(2) The classification shall be divided into such number of classes containing such descriptions of merchandise as the committee think fit, and the committee, in determining the class into which any particular merchandise shall be placed, shall, in addition to all other relevant circumstances, have regard to value, to the bulk in comparison to weight, to the risk of damage, to the cost of handling, and to the saving of cost which may result when merchandise is forwarded in large quantities.

#### *Standard Charges.*

Submission  
of schedules  
of charges.

30.—(1) The constituent companies in each group shall jointly, or with the consent of the rates tribunal any one or more of such companies may, submit to the rates tribunal not later than the thirty-first day of December, nineteen hundred and twenty-two, or such later date as the Minister may allow, a schedule of the standard charges proposed to be made by the amalgamated company into which they are to be formed, according to the classification fixed as aforesaid, and shall (except as hereinafter provided) show in that schedule the rates for the conveyance of merchandise, the amounts of terminal charges, and the fares for the conveyance of passengers and their luggage, and every such schedule shall be published in such manner as the rates tribunal may direct.

(2) The schedules so submitted shall be divided into the parts and be in the form mentioned in the Fourth Schedule to this Act, or into such other parts or in such other similar form as the rates tribunal may prescribe.



31. The rates tribunal shall consider the schedules of charges so submitted to them and any objections thereto which may be lodged within the prescribed time and in the prescribed manner, and, after hearing all parties interested and who are desirous of being heard, shall, in accordance with the provisions hereinafter contained, settle the schedules of charges and appoint a day (hereinafter called "the appointed day") when the same shall come into operation.

Settlement  
of schedules.

32. On and from the appointed day the charges appearing in the schedule of charges as fixed by the rates tribunal for each amalgamated company (in this Part of this Act referred to as "the standard charges") shall be the charges which that company shall be entitled to make for all services rendered in respect of which charges are fixed, and no variation either upwards or downwards shall be made from such authorized charges unless by way of an exceptional rate or an exceptional fare continued, granted, or fixed under the provisions of this Part of this Act, or in respect of competitive traffic in accordance therewith.

Obligation  
to charge  
standard  
charges.

33. As respects railway companies, other than amalgamated companies and light railway companies and railway companies whose powers of charging have, since the fourteenth day of August, nineteen hundred and nineteen, been increased by special Act either generally or in relation to any particular class of traffic, the rates tribunal shall apply to each such company the schedule of charges of such one of the amalgamated companies as, after considering any objections thereto which may be lodged within the prescribed time and in the prescribed manner and after giving the company in question and all other parties whom they consider to be entitled to be heard before them an opportunity of being heard, appears to the tribunal to be most appropriate to the case of that company, and may so apply it either without modification or subject to such modifications as the tribunal may think fit; and, where a schedule has been so applied to any company, the last foregoing section shall apply to the company as if it were an amalgamated company.

Application  
of schedules  
to non-  
amalgamated  
companies.

34.—(1) As from the appointed day all statutory provisions, and the provisions of all agreements with respect to classification of merchandise and with respect to charges for or in connection with the carriage of merchandise or passengers by any railway which becomes a railway of an amalgamated company, or of a railway company to which a schedule of standard charges is applied, shall to the extent to which those provisions relate to the matters aforesaid be repealed and cease to be operative, except so far as any statutory provision authorizes for the purpose of calculation of distance a special mileage to be allotted in respect of any portion of a railway, and except so far as, in the case of any such agreement or in the case of a statutory provision fixing a special charge, it may be continued under the provisions of this Part of this Act or by an order of the rates tribunal:

Repeal of  
existing  
provisions.

Provided that nothing in this Act shall, except as otherwise expressly provided, affect the provisions of section six of the Cheap Trains Act, 1883 (which relates to the conveyance of His Majesty's forces and matters connected therewith).

46 & 47 Vict.  
c. 34.

(2) In the case of the rates fixed under paragraph (v) of Sub-section (1) of Section six of the Cheap Trains Act, 1883, or in any case where it is proved to the satisfaction of the rates tribunal that any charge in operation on the fourth day of August, nineteen hundred and fourteen, and fixed under any subsisting



agreement or special statutory provision was originally so fixed for valuable consideration, the rates tribunal shall, and in any other case may, by order continue the charge, subject to such adjustment, if any, as to the tribunal may appear fair and equitable, and in making such adjustment, if any, the tribunal shall, as far as practicable, provide that the relative position between persons entitled to the charge and other persons as existing on the said fourth day of August shall not be prejudiced or improved.

Subsequent  
modifications  
of standard  
charges.

35. Any amalgamated company or any railway company to which a schedule of standard charges has been applied, or any representative body of traders or any person who may obtain a certificate from the Board of Trade that he is, in the opinion of the Board of Trade, a proper person for the purpose, shall be entitled at any time to apply to the rates tribunal to modify the standard charges or any of them, or any conditions relative thereto, and, if any such company or body of traders or person, as the case may be, prove to the satisfaction of the rates tribunal that the standard charges or conditions or any of them ought to be modified, the tribunal shall make such modifications as they think fit, and shall fix the date as from which the modified standard charges or conditions shall be effective :

Provided that sub-sections (3), (4), (5), and (6) of section fifty-nine of this Act shall apply to any application for a general revision or variation of standard charges of an amalgamated company under this section as if such application were a review of standard charges and exceptional charges under that section :

Provided also that, where the schedule of standard charges of any amalgamated company has been applied to any other company, the tribunal may modify the charges or any of them in the schedule as applied to the amalgamated company without modifying them in the schedule as applied to such other company, or modify them in the schedule as applied to such other company without modifying them in the schedule as applied to the amalgamated company.

#### *Exceptional Charges.*

Provisions as  
to existing  
exceptional  
rates.

36.—(1) On and from the appointed day all exceptional rates in operation immediately before the appointed day on the railway of any amalgamated company or any company to which a schedule of standard charges has been applied shall cease to operate, with the exception of such exceptional rates as—

- (a) are not less than five per cent below the standard rates which would otherwise on and from the appointed day become chargeable ; and
- (b) have been continued by agreement in writing between the railway company and the trader concerned or, failing agreement, have been notified in writing to the secretary of the railway company by the trader with a request that they should be referred to the rates tribunal for determination by them, in which case the rates shall continue until determined by the rates tribunal, and the onus of proving that any such rates should be altered or discontinued shall be upon the railway company ;

so nevertheless that no rate which has not been applied to the charging of merchandise actually forwarded within the two years preceding the first day of January, nineteen hundred and twenty-three, shall be continued unless the trader can prove to

the satisfaction of the railway company or, failing agreement with the railway company, to the satisfaction of the rates tribunal—

- (i) that its non-application is solely due to abnormal conditions of trade ; or
- (ii) that a rate of equal amount to the same destination remains in operation at other stations or sidings in the same group or area :

Provided that, if the trader and the railway company agree to continue any rate which will be more than forty per cent. below the standard rate chargeable as aforesaid, the rate shall, before the appointed day, be referred to the rates tribunal, and, if so referred, shall continue until the tribunal have determined the matter.

(2) Any such agreement or determination may provide for the continuance of any exceptional rate at the same or any higher figure or charge, not being, in the case of an agreement between a railway company and a trader, less than five per cent. nor more than forty per cent. below the standard rate chargeable, and for a specified period of time.

37.—(1) On and after the appointed day an amalgamated company or a railway company to which a schedule of standard charges has been applied shall be at liberty to grant new exceptional rates in respect of the carriage of any merchandise, which rates shall within fourteen days, or such longer period as the Minister may allow, be reported to the Minister ; so, however, that a new exceptional rate so granted shall not, without the consent of the rates tribunal, be less than five per cent. or more than forty per cent. below the standard rate chargeable.

New  
exceptional  
rates.

(2) If the Minister is of opinion that any company is granting new exceptional rates in such manner as prejudicially to affect any class of users of the railway not benefited by such rates, or so as to jeopardize the realization of the standard revenue of such company, he may refer the matter to the rates tribunal, who may, after giving all parties interested an opportunity of being heard, take either or both of the following courses—

- (a) revise the standard charges of that company or any of them ;
- (b) cancel or modify all or any of such exceptional rates.
- (3) any trader may, at any time, apply to the rates tribunal to fix a new exceptional rate.

38.—(1) An amalgamated company or a railway company to which a schedule of standard charges has been applied shall not be entitled to increase or cancel any exceptional rate which has been fixed by the rates tribunal without first obtaining the sanction of that tribunal.

Variation of  
exceptional  
rates.

(2) Any such company may, at any time, reduce any exceptional rate, so, however, that the rate shall not, without the consent of the rates tribunal, be reduced so as to be more than forty per cent below the standard rate which would be chargeable, but any such reduction shall be reported to the Minister in like manner as if it were the grant of a new exceptional rate.

(3) Any such company may, at any time, increase any exceptional rate which has not been fixed by the rates tribunal on giving thirty days' notice in such manner as the rates tribunal may prescribe of the proposed increase, and on the expiration of such notice may, if no objection be raised by any trader interested, forthwith bring the increased rate into force, provided that it is not less than five per cent below the standard rate chargeable, but, if such an objection be raised or if the rate when

increased would be less than five per cent. below the standard rate chargeable, the increase shall not have effect unless and until the rates tribunal, after giving the company an opportunity of being heard, so determine :

Provided that no trader shall be entitled to object to an increase of an exceptional rate reduced by a railway company since the appointed day unless the effect of the increase is to make the rate applicable to his traffic higher than the rate applicable thereto immediately before the reduction.

(4) Any such company may, at any time, cancel any exceptional rate which has not been fixed by the rates tribunal on giving thirty days' notice in such manner as the rates tribunal may prescribe of the proposed cancellation, and on the expiration of such notice may, if no objection be raised by any trader interested, forthwith cancel the rate as proposed, but, if any such objection be raised, the cancellation shall not have effect unless and until the rates tribunal, after giving the company an opportunity of being heard, so determine :

Provided that no trader shall be entitled to object to the cancellation of an exceptional rate granted by a railway company since the appointed day unless the effect of the cancellation is to make the rate applicable to his traffic higher than the rate applicable thereto at the date when the exceptional rate was granted.

(5) No such increase or cancellation shall take effect in the case of any exceptional rate referred to the rates tribunal under paragraph (b) of sub-section (1) of section thirty-six of this Act pending the decision of the tribunal with reference thereto, and any exceptional rate agreed under the said section thirty-six shall not be increased or cancelled for a period of twelve months after the appointed day except as part of a general increase under this Part of this Act or to abate an undue preference.

(6) Any trader or representative body of traders interested in the rate, or any such company, shall be entitled to apply to the rates tribunal at any time to cancel or vary any exceptional rate.

(7) Any such company may cancel any exceptional rate existing after the appointed day which for a period of two years shall not have been applied to the charging of merchandise actually forwarded by railway.

Review of  
competitive  
exceptional  
rates.

39. If and whenever representations are made to the Minister by any body of persons who, in the opinion of the Board of Trade, are properly representative of the interests of shipping or canals, that exceptional rates are being charged which are competitive with coastwise shipping or canals in such a manner as to be detrimental to the public interest, and which are inadequate having regard to the cost of affording the service or services in respect of which the rates are charged, the Minister shall (if satisfied that a *prima facie* case has been made out) refer the matter to the rates tribunal for review, and the rates tribunal may, after hearing all parties whose interests are affected, vary or cancel such rates or make such other order as may seem to them expedient.

Disintegration  
of exceptional  
rates.

40.—(1) Where application is made to the rates tribunal to fix or sanction any exceptional rate for the carriage of merchandise between two stations, or between a station and a siding, or between two sidings, or between either a station or a siding and a junction, the rates tribunal in fixing or sanctioning the exceptional rate shall determine the amounts (if any) to be included in the rate for the following services—

(a) conveyance ;

- (b) station terminals ;
- (c) service terminals ;
- (d) accommodation provided and services rendered at or in connection with a private siding.

(2) Where an amalgamated company or a railway company to which a schedule of standard charges has been applied grants an exceptional rate for the carriage of merchandise between two stations, or between a station and a siding, or between two sidings, or between either a station or a siding and a junction, without referring to the rates tribunal, and the company shows in the quotation for the rate and in the rate book the amount (if any) included therein for such several services as aforesaid, the disintegration of the exceptional rate as so shown shall be conclusive unless a trader interested in the rate complains that the amount allocated to any particular service is unreasonable, in which event the onus of proof shall be on the railway company.

(3) Where any such company in granting such an exceptional rate has not distinguished in the quotation for the rate or in the rate book the amounts included therein for such several services as aforesaid—

(a) the rate, in the case of a station-to-station rate, shall be deemed to be composed of conveyance rate and terminal charges in proportion to the amounts included in the corresponding standard rate for the same service and accommodation in respect of similar goods between the same station ; and

(b) in the case of any other rate, the company shall, within fourteen days after application in writing by any person interested in the disintegration of the rate, afford that person information of the amounts (if any) included in the rate for the several services aforesaid.

(4) Any dispute as to the disintegration of any such exceptional rate shall be determined by the rates tribunal at the instance of either a trader or the railway company.

(5) For the purposes of determining any question of an alleged undue or unreasonable preference or advantage, the Railway and Canal Commission shall not have regard to the separate component parts of any rate as shown in the rate book, or as determined by this section, but shall, unless in any case in which an application has been made for the purpose it is proved to the satisfaction of the Commission that a consideration of the component parts of the rate would be fair and reasonable, determine the question in reference to the total rate for carriage applicable to the merchandise in respect of which such undue or unreasonable preference or advantage is alleged to arise and the conditions under which the rate applies.

41.—(1) Any amalgamated company or railway company to which a schedule of standard charges has been applied may charge fares below the standard fares in such circumstances as the company may think fit, but the circumstances in which such exceptional fares, if below ordinary fares, may be charged, and the amount of reduction below the standard fare, shall be reported to the Minister within fourteen days, or such longer period as the Minister may allow, after the decision has been arrived at.

Exceptional fares.

(2) If the Minister is of opinion that any company has granted exceptional fares in such a manner as prejudicially to affect any other class of users of the railway, or so as to jeopardize the realization of the standard revenue of the company, he may refer



the matter to the rates tribunal, who may, after giving the parties interested an opportunity of being heard, cancel or modify all or any of the exceptional fares so granted.

*Conditions of Carriage.*

Submission  
of proposed  
conditions.

42. Within six months from the passing of this Act, or within such further time as the rates tribunal may permit, the constituent companies in all the groups shall jointly submit to, and publish in such manner as may be prescribed by, the rates tribunal—

- (a) the terms and conditions (hereinafter called "company's risk conditions") on and subject to which merchandise other than live stock, and live stock, will respectively be carried if carried at ordinary rates ;
- (b) the terms and conditions (hereinafter called "owner's risk conditions") on and subject to which merchandise other than live stock, and, subject as hereinafter provided, live stock, will respectively be carried if carried at owner's risk rates ;
- (c) the terms and conditions on and subject to which damageable goods not properly protected by packing will be carried.

Settlement  
by tribunal.

43.—(1) The rates tribunal shall consider the terms and conditions so submitted, or, if the companies fail to submit terms and conditions within the time so allowed, shall themselves prepare and publish provisional terms and conditions, and after hearing any representative body of traders who may desire to be heard or any person who may obtain a certificate from the Board of Trade that he is, in the opinion of the Board of Trade, a proper person for the purpose, and any other party whom they consider entitled to be heard, shall settle, and when settled publish in the *London* and *Edinburgh Gazettes* the terms and conditions which they consider just and reasonable, and shall fix a date, not earlier than two months after such publication, upon which those terms and conditions are to come into force.

(2) When the terms and conditions so settled come into force they shall be the standard terms and conditions of carriage for all railway companies and shall be deemed to be reasonable.

Conditions  
on which  
merchandise  
to be carried.

44.—(1) On and after the date so fixed as aforesaid the terms and conditions upon and subject to which merchandise is apart from special contract to be carried by a railway company shall be company's risk conditions, and those conditions shall apply without any special contract in writing to the carriage of merchandise at ordinary rates :

Provided that, in any case where an owner's risk rate is in operation and the company has been requested in writing to carry at that rate, the terms and conditions upon and subject to which such goods shall be carried shall be owner's risk conditions.

(2) The terms and conditions upon and subject to which damageable goods not properly protected by packing (if accepted by the company for carriage) shall be carried by a railway company shall be the conditions settled by the rates tribunal as aforesaid, but the company shall not be under any obligation to carry damageable goods not properly protected by packing.

(3) Subject to the provisions of the Railway and Canal Traffic Acts, 1854 and 1888, nothing in this Act shall preclude a company and a trader from agreeing in writing to any terms



and conditions they think fit for the carriage of merchandise, live stock or damageable goods not properly protected by packing, or dangerous goods.

45. At any time after the date when the terms and conditions so settled as aforesaid come into force a railway company or any representative body of traders may apply to the rates tribunal to amend, alter or add to those terms and conditions, and the tribunal may, after hearing all parties whom they consider entitled to be heard, make such amendments, alterations, or additions of or to such terms and conditions as the tribunal think just and reasonable, and fix a date as from which they are to come into operation.

Alteration of conditions.

#### *Miscellaneous Provisions as to Charges.*

46.—(1) When settling a schedule of charges, or within twelve months or such longer period thereafter as in any case the Minister may allow, the rates tribunal shall determine what reductions shall be made from the standard charges where damageable merchandise is carried by railway under owner's risk conditions, and such reductions shall be shown or indicated in the schedules in such manner as the tribunal prescribe.

Owner's risk rates.

(2) Where an exceptional rate is in operation and the conditions applicable to that rate are the company's risk conditions, or, as the case may be, the owner's risk conditions, and the difference in the company's liability under the two sets of conditions in respect of the merchandise in question is not insignificant, the company shall, on request in writing by a trader, quote a corresponding rate under the other conditions, and, if within twenty-eight days from such request the company fails to quote such a rate to the satisfaction of the trader, the trader may apply to the rates tribunal, and the tribunal shall settle such corresponding rate and determine the date as from which it is to come into operation.

(3) The difference between an ordinary rate and an owner's risk rate shall be such as in the opinion of the rates tribunal is fairly equivalent to the amount by which the risk of the company in the case of the merchandise in question differs under the two sets of conditions.

(4) A railway company shall be under no obligation to carry live stock at owner's risk in cases in which live stock is not at the date of the passing of this Act carried at reduced rates under owner's risk conditions.

47.—(1) Where on or after the appointed day in pursuance of Section twenty-five of the Railway and Canal Traffic Act, 1888, a railway company or person requires traffic to be forwarded at through rates or fares the company or person shall give written notice of the proposed through rate or fare to each company owning any part of the through route (hereinafter called "the forwarding company") stating both its amount and the route by which the traffic is proposed to be forwarded, and, where a company gives such notice, it shall also state the apportionment of the through rate or fare.

Through rates and fares.

Each forwarding company shall, within ten days or such longer period as the rates tribunal prescribe after the receipt of such notice, by written notice inform the company or person requiring the through rate or fare whether it agrees to the rate or fare and the route, and, if it objects to either, the grounds of the objection.

(2) The rate or fare shall come into operation at the expiration of the said ten days or other prescribed period :

Provided that, if before that expiration any such objection as aforesaid has been sent, or if, in the case of a rate, the rate is less than five per cent. or more than forty per cent. below the combined standard charges of all the forwarding companies, the matter shall be referred to the rates tribunal for their decision.

(3) If an objection is made to the granting of the rate or fare or to the route, the rates tribunal shall consider whether the granting of the rate or fare is a due and reasonable facility in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate or fare accordingly or fix such other rate or fare as may seem to the rates tribunal just and reasonable.

(4) Where upon the application of a railway company or person requiring traffic to be forwarded a through rate or fare is agreed to by the forwarding companies or is made by order of the rates tribunal, the apportionment of such through rate or fare, if not agreed upon between the forwarding companies, shall be determined by the rates tribunal.

(5) If there is no objection except as to the apportionment of the rate or fare, the rate or fare shall come into operation as provided by sub-section (2) of this section in the case where no objection has been sent by a forwarding company, but the decision of the rates tribunal as to its apportionment shall be retrospective ; in any other case the operation of the rate or fare shall be suspended until the decision is given.

(6) In apportioning a through rate or fare between the railway companies concerned the rates tribunal shall take all the circumstances into account, including any special charges, fixed allowances, and minimum mileage amounts, which any company may have been entitled to make or receive in respect of the route or any part of the route over which such through rate or fare applies.

(7) For the purpose of calculating the through rate or fare, the standard charge for each portion of the through route shall be that which would have been applicable to such portion had the conveyance for the entire distance of the through route been upon the railway of the company owning such portion, and as if throughout the through route the mileage had been continuously upon one railway, and shall be calculated on the shortest working distance between the two points over the railways of the forwarding companies :

Provided that in such a calculation effect shall be given to any statutory provision whereby a special mileage is allotted in respect of any portion of railway.

(8) The rates tribunal shall have power to decide that any proposed through rate or fare is just and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of the through rate or fare than the standard rate or fare which the company is entitled to charge, and to allow and apportion the through rate or fare accordingly.

(9) Where a railway company uses, maintains, or works, or is a party to an arrangement for using, maintaining, or working, vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this Section shall extend to such vessels and to the traffic carried thereby.

(10) Where part of the through route is over a railway of a light railway company or of a railway company to which no

schedule of standard charge applies, or is by sea, this section shall have effect as if the ordinary rate or fare for the time being chargeable for the conveyance of the traffic over that railway or by the sea route were the standard charge.

(11) This section shall not apply where part of the through route is over a canal.

48. An amalgamated company or a railway company to which a schedule of standard charges has been applied shall be entitled to charge for the conveyance of merchandise as for a minimum distance of such number of miles as the rates tribunal may determine, or such minimum sum as the rates tribunal may determine, and the rates tribunal may fix greater minimum distances or higher minimum sums where the conveyance is over the railways of two or more such companies, but such minimum distances shall not vary according to whether charges for station terminals are or are not made.

Minimum  
rates.

49.—(1) On and after the appointed day a railway company may collect and deliver by road any merchandise which is to be or has been carried by railway and may make reasonable charges therefor in addition to the charges for carriage by railway, and shall publish in the rate book kept at the station where it undertakes the services of collection and delivery the charges in force for the collection and delivery of merchandise ordinarily collected and delivered.

Collection  
and delivery  
charges.

(2) Any such company may, and upon being required to do so and upon payment of the proper charges shall, at any place where the company holds itself out to collect and deliver merchandise, perform the services of collection and delivery in respect of such merchandise as is for the time being ordinarily collected and delivered by the company at that place :

Provided that the company shall not be required to make delivery to any person who is unwilling to enter into an agreement terminable by him on reasonable notice for the delivery by the company at the charges included in the rate book of the whole of his traffic, or the whole of his perishable traffic, from the station at which those charges apply.

(3) Where any person does not so agree, the company shall not be required to deliver any of his merchandise, but, if such person fails to take delivery of any merchandise within a reasonable time, the company may deliver such merchandise and make such reasonable charges therefor as it thinks fit.

(4) Any dispute as to whether or not any charge for the services of collection and delivery is reasonable, or whether the length of notice for the termination of an agreement under this section is reasonable, shall be determined by the rates tribunal.

50.—(1) Nothing contained in this Act shall impose any obligation on any railway company to accept dangerous goods for conveyance, or shall prejudice or derogate from the powers of His Majesty in Council, or of any Government department, under the Explosives Act, 1875, or affect the validity or operation of any Order in Council, order, rule, or by-law made under the powers contained in that Act.

Dangerous  
goods.

38 & 39 Vict.  
c. 17.

(2) If on or after the appointed day any such company accepts dangerous goods for conveyance, the goods shall be conveyed subject to such by-laws, regulations and conditions as the company may think fit to make in regard to the conveyance or storage thereof, and the owner or consignor of such goods shall indemnify the company from and against all loss or damage which may result to the company or to which the company may

be or become liable owing to non-compliance with the before-mentioned by-laws, regulations, and conditions as to such goods and will pay full compensation for all injury to the company's servants and damage to its property so arising unless it be proved that the injury or damage is due to the wilful misconduct of the company's servants, but, subject as aforesaid, the provisions of this Part of this Act as to ordinary rates and owner's risk rates shall apply.

(3) Any question as to whether goods are dangerous goods shall be determined by the rates tribunal ;

Provided that, where a railway company has declared any article to be dangerous, it shall lie on the person requiring the article to be carried to show that it is not dangerous.

Charges on  
jointly  
owned lines.

51. Where a railway is owned jointly by two or more railway companies (being amalgamated companies or railway companies to which a schedule of standard charges has been applied) then, for the purposes of this Part of this Act—

- (a) if the route lies wholly on the railway of one of the owning companies and the jointly owned railway, the charges shall be the charges which would have been chargeable if the whole route had been over the railway of that owning company ; and
- (b) in any other case, the charges in respect of the jointly owned railway shall be the charges appearing in the schedule of charges applied to that railway.

Charges for  
competitive  
traffic.

52.—(1) Where any two places are connected by routes belonging to or operated by two or more railway companies (being amalgamated companies or railway companies to which a schedule of standard charges has been applied) and the standard rate for the carriage of merchandise by one such route is less than the standard rate by another such route, the standard rate for the carriage of merchandise by the first mentioned route may, subject to the provisions of this section as to circuitous routes, be charged as the standard rate for the carriage of merchandise by such other route.

(2) For the purposes of this section, a circuitous route means a route which is longer by thirty per cent. or more than the shortest route between the two places.

(3) Within six months after the date of amalgamation or such longer time as the Minister may allow every amalgamated company and every company liable to have applied to it a schedule of standard charges shall submit to the Minister in such form as he may direct a schedule of the circuitous routes to which it is desired that this section shall be applied. The Minister shall refer to the rates tribunal the schedules so submitted to him, and the tribunal shall, after giving all parties whom they consider entitled to be heard before them an opportunity of being heard, consider whether the routes contained in the said schedules are, having regard to all the circumstances, including the public interest, desirable and adequate, and shall settle the schedules accordingly, and this section shall apply to the circuitous routes contained in the schedules as settled, but, save as hereinafter provided, to no other circuitous routes.

(4) After the settlement of such schedules any such company may apply this section to a new circuitous route not included in its schedule, but the company shall, within fourteen days, report the route to the Minister in such manner as he may direct, and, if the Minister considers that the proposal involves unreasonable competition or is not in the public interest, he may refer the



matter to the rates tribunal who may, after giving all parties whom they consider entitled to be heard before them an opportunity of being heard, cancel the route :

Provided that, if the proposed circuitous route exceeds by fifty per cent. or more the shortest route between the two places, this section shall not be applied thereto without the consent of the rates tribunal.

53. As from the appointed day, any amalgamated company or any railway company to which a schedule of standard charges has been applied whose powers of charging in respect of the conveyance of passengers and their luggage in steam or other vessels provided or used by any such company are limited by statute, may demand, take, and recover such reasonable fares as it shall think fit for and in respect of the conveyance of passengers and their luggage in such steam or other vessels, and any question as to the reasonableness of such fares shall be determined by the rates tribunal.

Fares on  
ships.

54.—(1) The schedules of standard charges and the standard terms and conditions of carriage when settled in accordance with the provisions of this Part of this Act, and any orders of the rates tribunal modifying standard charges or standard terms and conditions shall be deemed to be statutory rules within the meaning of the Rules Publication Act, 1893, but nothing in this provision shall be construed as making any such schedules or orders statutory rules to which section one of that Act applies.

Publication  
of schedules  
of standard  
charges, &c.

(2) Printed copies of the general classification of merchandise and schedule of standard charges for the time being in force shall be kept for sale by every railway company to which the same apply at such places and at such reasonable prices as the Minister may direct.

(3) On and after the appointed day, every railway company shall keep for public inspection at each station at which merchandise is received for conveyance, or, where merchandise is received for conveyance at some other place than a station, then, at the station nearest to such place, a copy of the general classification of merchandise carried on the railway of the company and a book or books stating—

- (i) the chargeable distance from that station or place of every place to which they book ;
- (ii) the scales of standard charges applicable to each class of merchandise conveyed on the railway ;
- (iii) all exceptional rates in operation from such station or place ;
- (iv) any charges in force for the collection and delivery of merchandise at such station or place.

The general classification of merchandise and every such book shall, during all reasonable hours, be open to the inspection of any person without the payment of any fee.

(4) On and after the appointed day, every railway company shall for a period of ten years keep open for inspection at its head office, the books, schedules, or other papers specifying the rates, charges, and conditions of transport in use on the fourteenth day of January, nineteen hundred and twenty, upon the several railways owned or worked by the company, and shall, upon demand and upon payment of a reasonable charge, supply copies of or extracts from such books, schedules, and papers.

(5) Where a railway company carries merchandise partly by land and partly by sea all the books, tables and documents touching the rates of charge of the railway company, which are



kept by the railway company at any port in Great Britain used by the vessels which carry the sea traffic of the railway company, shall, besides containing all the rates charged for the sea traffic, state what proportion of any rate is appropriated to the conveyance by sea, distinguishing such proportion from that which is appropriated to the conveyance by land on either side of the sea.

(6) Any company failing to comply with the provisions of this section shall, for each offence and in the case of a continuing offence for every day during which the offence continues, be liable on summary conviction to a fine not exceeding five pounds.

Miscellaneous provisions as to rates.

55. The provisions contained in the Fifth Schedule to this Act (being provisions similar to those now contained in the various railway rates and charges orders) shall, as from the appointed day, apply to the amalgamated companies and the railway companies to which a schedule of standard charges has been applied.

Amendments of certain Acts.

56.—(1) As from the appointed day the Acts mentioned in the first column of the Sixth Schedule to this Act shall, in their application to railway companies, have effect subject to the amendments specified in the second column of that schedule.

(2) Where any existing special Act relating to any railway company does not incorporate a section of any of the Railways Clauses Acts which is amended or repealed by the said schedule but contains provisions corresponding to such section, the like amendment or repeal shall be made of such corresponding provision as is made by the said schedule of the section of the Railways Clauses Act.

Interpretation of Part III.

57. For the purposes of this Part of this Act, unless the context otherwise requires—

The expression “charges” includes rates, fares, tolls, dues and other charges.

The expression “rates” means rates and other charges in connection with the carriage of merchandise.

The expression “fares” means fares and other charges in connection with the conveyance of passengers and their luggage.

The expression “modifications” in relation to charges includes modifications whether by way of decrease or increase, and “modify” shall be construed accordingly.

The expression “merchandise” includes goods, minerals, live stock, and animals of all descriptions.

The expression “exceptional charges” means charges below the standard charges, including special charges continued subject to adjustment under the provisions of this Part of this Act, and the expressions “exceptional rates” and “exceptional fares” shall be construed accordingly.

The expression “conditions” includes regulations.

The expression “railway rates and charges orders” means the provisional orders fixing maximum rates and charges applicable to the several railway companies made and confirmed by Parliament in pursuance of section twenty-four of the Railway and Canal Traffic Act, 1888.

The expression “prescribed” means prescribed by the rates tribunal.

#### *Adjustment of Charges to Revenue.*

58.—(1) The charges to be fixed in the first instance for each amalgamated company shall be such as will, together with the

Adjustment  
of powers of  
charging to  
revenue.

other sources of revenue, in the opinion of the rates tribunal, so far as practicable yield, with efficient and economical working and management, an annual net revenue (hereinafter referred to as the standard revenue) equivalent to the aggregate net revenues in the year nineteen hundred and thirteen of the constituent companies and the subsidiary companies absorbed by the amalgamated company, together with—

- (a) a sum equal to five per cent. on capital expenditure forming the basis on which interest was allowed at the end of the period during which the constituent companies and subsidiary companies were in the possession of the Government; and
- (b) such allowance as may be necessary to remunerate adequately any additional capital which may have been raised or provided in respect of expenditure on capital account incurred since the first day of January, nineteen hundred and thirteen, and not included in the expenditure referred to in the last preceding paragraph, unless it can be shown that such expenditure has not enhanced the value of the undertaking; and
- (c) such allowance as appears to the rates tribunal to be reasonable in respect of capital expenditure (not being less than twenty-five thousand pounds in the case of any work, and not being capital expenditure included in paragraph (a)), on works which enhance the value of the undertaking, but which had not at the beginning of the year nineteen hundred and thirteen become fully remunerative:

Provided that, in determining the sum which charges will, with efficient and economic working and management, yield, the tribunal shall, with a view to encouraging the taking of early steps for effecting economies in working and management expenses rendered possible by or in anticipation of amalgamation, take into consideration the economies effected by such steps already taken, and shall make such allowance in respect thereof as the tribunal may consider fair and equitable to an amount not exceeding thirty-three and one-third per cent. of such economies.

(2) The tribunal when fixing charges in pursuance of the provisions of this section shall have regard to the means which in their opinion are best calculated to ensure the maximum development and extension in the public interest of the carriage by railway of merchandise and of passengers and their luggage, and shall accordingly ascertain as far as may be practicable the effect which the existing charges, or any of them, have had upon the merchandise or passenger traffic to which they are applicable, and in particular whether the application of such charges has tended or, if continued, would be likely to tend towards causing the increase or diminution of the said traffic.

(3) If on any such review as is mentioned in the next following section it appears to the rates tribunal that the allowance made under paragraph (c) of sub-section (1) of this section was too high or too low, the tribunal may revise the allowance and make such adjustment in the amount of the standard revenue as may be necessary.

(4) When fixing the charges necessary to produce the standard revenue, the tribunal shall take into consideration the charges in respect of any business carried on by the company ancillary or subsidiary to its railways, the charges for which are not

subject to the jurisdiction of the tribunal, and if in the opinion of the tribunal the company is not making, or has not taken reasonable steps to enable it to make, adequate charges in respect of any such business, the tribunal shall, in fixing the charges under this Part of this Act, take into account the revenue which would be produced by any such business if adequate charges were in operation.

Periodical  
review of  
standard  
charges and  
exceptional  
rates.

59.—(1) The rates tribunal shall review the standard charges and exceptional charges of each amalgamated company at the end of the first complete financial year after the appointed day, or, if the appointed day is the first day of January in any year, at the end of that year, and, unless directions are given by the Minister to the contrary in manner hereinafter appearing, at the end of each succeeding year, and the review shall be made on the experience of the operation of those charges for the period during which the standard charges have been in operation, or, if that period is more than three years, then on the experience of the operation of those charges during the preceding three years.

(2) The Minister may direct as respects any year after the second annual review that a review shall not be held, and the directions may extend either to all the amalgamated companies or to any one or more of those companies :

Provided that no such direction shall extend to any company which has applied to the Minister for a review, or in respect of which the Board of Trade on the application of any representative body of traders have requested that a review shall be held.

(3) If on any such review the rates tribunal find that the net revenue or the average annual net revenue obtained, or which could, with efficient and economic management, have been obtained, by the company during the period on the experience of which the review is based is substantially in excess of the standard revenue of the company, with such allowance (if any) as appears to the tribunal necessary to remunerate adequately any additional capital which may have been raised or provided in respect of expenditure on capital account incurred since the date upon which the standard charges were fixed in the first instance, the tribunal shall, unless they are of opinion that owing to change in circumstances the excess is not likely to continue, modify all or any of the standard charges and make a corresponding general modification of the exceptional charges of the company so as to effect a reduction of the net revenue of the company in subsequent years to an extent equivalent to eighty per cent of such excess :

Provided that the tribunal in making such modifications as aforesaid as respects one amalgamated company shall, so far as practicable, avoid making such modifications as would be likely to affect prejudicially the financial position of any other railway company.

(4) If on any such review the rates tribunal find that the net revenue or the average annual net revenue obtained by the company during the period on the experience of which the review is based is less than the standard revenue of the company, with such allowance (if any) as appears to the tribunal necessary to remunerate adequately any additional capital which may have been raised or provided in respect of expenditure on capital account incurred since the date upon which the standard charges were fixed in the first instance, and that the deficiency is not due to lack of efficiency or economy in the management,

the tribunal shall, unless in their opinion owing to change of circumstances the deficiency is not likely to continue, make such modifications in all or any of the standard charges and such a corresponding general modification of the exceptional charges of the company as they may think necessary to enable the company to earn the standard revenue with such allowance (if any) as aforesaid.

(5) Whenever on any such review such an excess as aforesaid is found, then, for the purposes of subsequent reviews, sub-section (3) of this section shall have effect as if for the standard revenue there were substituted a sum (hereinafter referred to as the "increased standard") equal to the standard revenue with the addition of twenty per cent. of such excess, and whenever on any such subsequent review an excess is found above the increased standard together with the allowance (if any) for additional capital, then, for the purpose of subsequent reviews, the increased standard shall be increased by a sum equal to twenty per cent. of such excess, and so on :

Provided that, if at any time after such an excess has been found, the standard charges and exceptional charges are modified in pursuance of sub-section (4) of this section on account of a deficiency, no such substitution shall be made until an excess above the standard revenue together with the allowance (if any) for additional capital is again found.

(6) The rates tribunal, when modifying charges on any such review, shall have regard to the like considerations as when fixing charges in the first instance :

Provided that the tribunal shall have regard to the financial results obtained from the operation of any ancillary or subsidiary business carried on by the company, and if satisfied that the net revenue resulting therefrom is, having regard to all the circumstances, unduly low, may, for the purpose of such review, make such deductions from the charges which would otherwise have been fixed as they think proper.

(7) The modifications of standard charges and exceptional charges made in pursuance of this section shall take effect as from the first day of July in the year following the last year under review or such other date as the rates tribunal may fix.

#### *Transitory Provisions.*

60. A constituent, subsidiary, or amalgamated company, or any railway company which is liable to have applied to it a schedule of standard charges shall, notwithstanding anything contained in any special or general Act or in any agreement, be entitled till the appointed day to make such charges in connection with the carriage of merchandise and passengers or otherwise as were in force as respects the railway on the fifteenth day of August, nineteen hundred and twenty-one ; or, where no such charges were in force on that date, then such reasonable charges as shall, in case of difference, be determined by the rates tribunal :

Provided that at any time after the said fifteenth day of August, and before the appointed day,

- (i) any representative body of traders may apply to the rates tribunal to reduce the aforesaid charges or any of them ;
- (ii) any trader interested in any particular charge may apply to the rates tribunal to reduce that charge ;
- (iii) any such company may apply to the rates tribunal to

increase the aforesaid charges or any of them ;  
and any such application shall be published in such manner as the

Transitory  
provisions  
to charges  
generally.



rates tribunal prescribe and the tribunal after hearing all parties whom they consider entitled to be heard may make such modifications in the said charges or any of them as to the tribunal may seem just, and shall fix a day upon which the modifications are to come into force.

Provisions as to charges in connection with private sidings.

61.—(1) Until an agreement has been made, or the rates tribunal have determined any differences that may arise, between the railway company concerned and the owner of or any person using a private siding (in this section called the "siding owner") as to the sum payable (if any) for accommodation and services provided in connection with the siding, the following provisions shall apply—

- (1) Where at the passing of this Act an agreement exists between a railway company (being a constituent or subsidiary company or a company which is liable to have applied to it a schedule of standard charges) and a siding owner, under which the siding owner pays either the whole of the station and service terminals or pays such terminals and is allowed a rebate upon a percentage basis, the agreement shall continue to operate for the period fixed by the agreement, and after the expiration of the agreement, or, if the agreement is terminable on notice, then from the expiration of any notice given thereunder, the provisions of the agreement shall be deemed to remain in force notwithstanding any change which may be made in the amount of the terminal charges :
- (2) Where at the passing of this Act an agreement exists between any such railway company and a siding owner whereby the siding owner pays for accommodation and services provided in connection with the delivery or collection of merchandise at the siding a fixed sum, or pays for such services terminal charges less a rebate of a fixed amount, the agreement shall continue to operate for the period fixed by the agreement, and after the expiration thereof, or, if the agreement is terminable on notice, then from the expiration of any notice given thereunder, the sum so payable or the rebate so allowed shall be increased in proportion to the amount by which the aggregate of the conveyance rate and station and service terminals may have been increased since the date of the agreement :
- (3) Where at the passing of this Act there is no express agreement as to the amount to be paid for such services, but the siding owner in fact pays station terminals and service terminals or any portion thereof or either of them, the siding owner shall hereafter pay for such services as aforesaid the station terminals and service terminals or such portion of the same as he has heretofore paid :
- (4) Where after the passing of this Act a new siding is connected with the railway, or traffic which is not provided for under the foregoing provisions of this section passes to an existing siding, the siding owner shall pay for the aforesaid services the amount of the station and service terminals for the time being in force ; provided that the sum thereafter agreed or in default of agreement determined by the rates tribunal to be payable for such services shall be payable from the date of such connection for traffic or of the passing of the traffic as the case may be or for a period of twelve months from the date of application to the tribunal, whichever is shorter ;



Provided that nothing contained in this section shall give rise to any presumption as to the value of the aforesaid accommodation and services, and in fixing any sum which the siding owner is to pay the rates tribunal shall have regard only to what sum is reasonable in all the circumstances of the case.

(2) The Railway and Canal Commission shall not, after the passing of this Act, exercise any jurisdiction with respect to the matters to which this section relates.

## PART VI

### GENERAL.

75.—(1) In order to facilitate the transmission of traffic Facilities. passing or intended to pass to or from places on or beyond the railway of any amalgamated company from or to places on or beyond the railway of any other amalgamated company, every amalgamated company shall, at all times, afford to any such other amalgamated company all reasonable facilities for the convenient working, forwarding, and conveyance of such traffic via proper and convenient points of exchange, including through rates and fares, the efficient working of trains at suitable and convenient times so as to satisfy the reasonable requirements of the public for the reception, forwarding, and delivery of such traffic, and shall, so far as circumstances reasonably admit, accommodate, manage, and forward such traffic as effectually, regularly, and expeditiously as if it were its own proper traffic.

(2) Except as hereinafter provided, all facilities for the interchange of traffic and the arrangements as to routes and divisions and invoicing of traffic which on the first day of August, nineteen hundred and fourteen, were in operation between any company and any other company who will not form part of the same group shall, unless otherwise mutually agreed between the companies concerned, be continued by and be binding upon the amalgamated company of which any such company shall form part, as if such amalgamated company had been party to the said facilities and arrangements, but not so as to enlarge or diminish the scope or duration of any such facilities or arrangements:

Provided always that no amalgamated company, except with the consent of the other companies concerned, shall alter or discontinue any point of exchange with any other amalgamated company or companies before the expiration of five years from the date when the amalgamation scheme applicable to such first mentioned amalgamated company came into operation, and then only on giving six calendar months' notice in writing of such intention to the other company or companies, and, if the other amalgamated company or companies shall object to such proposed alteration or discontinuance, the matter shall be referred to the rates tribunal, who shall make such order as they shall think just.

(3) Subject to the provisions of this Act with respect to circuitous routes, in the case of a route competitive with its own by which traffic passes the through rates or fares charged by any amalgamated company shall not, unless the rates tribunal for good cause shown so order, be higher than those charged by its own route.

(4) No constituent or subsidiary company and no amalgamated company shall be at liberty to refuse to receive, forward,

Allocation of  
receipts on  
worked  
railways.

or deliver traffic consigned by a through route on the ground that such traffic can be carried by a route which has, through the operation of this Act, become local to such company.

76. Where under any Act or agreement passed or made before the passing of this Act any railway is maintained and worked on terms based upon the receipts from the traffic on such railway, the amount which shall be payable to the owning company out of such receipts shall be such as would have been payable to them if the rates, fares, tolls, dues, and charges in respect of such traffic had been the same as those in operation during the year nineteen hundred and thirteen, but not less than the amount actually paid in that year with the addition of an amount in respect of interest on capital expenditure at the same rate per annum as was payable by the Government to any such company in respect of the year nineteen hundred and twenty under the agreements or arrangements relating to the possession by the Crown of the railway of such company, and the balance of such receipts shall be retained by the company maintaining and working the said railway.

Accounts,  
returns, and  
statistics.

77.—(1) The accounts to be rendered under the Railway Companies (Accounts and Returns) Act, 1911, shall be compiled in such manner as may be determined by the Railway Clearing House with the approval of the Minister, or, if the Minister is unable to approve the proposals of the Railway Clearing House, as may be determined by the Minister after reference to, and considering the report thereon by, a committee composed of not less than three or more than six persons nominated by the Railway Companies' Association, and not less than three or more than six expert and impartial persons of wide commercial and trading experience to be chosen by the Minister from the panel set up under section twenty-three of the Ministry of Transport Act, 1919, as extended by this Act.

(2) It shall be the duty of every railway company to compile and render to the Minister the statistics and returns set out in the Eighth Schedule to this Act, sub-divided in the case of an amalgamated company in accordance with such operating areas as may be agreed between the Minister and the company, subject, nevertheless, to such variation of those statistics and returns as may from time to time be agreed between the Minister and the Railway Companies' Association :

Provided that the Minister may exempt any light railway company from the obligations imposed by this sub-section to such extent as he may think fit.

(3) In the event of non-compliance on the part of any railway company with any requirement of this section, the requirement shall be enforceable by order of the Railway and Canal Commission on the application of the Minister in any of the ways referred to in section three of the Railway and Canal Traffic Act, 1854, or section six of the Regulations of Railways Act, 1873.

(4) Nothing in this section shall be interpreted to authorize any limitation of or interference with the control of the proprietors of any undertaking over the purposes to which its expenditure is to be applied.

Provision for  
applications  
by public  
authorities in  
certain cases.

78.—(1) Where under this Act an application may be made by a representative body of traders, or by a body of persons representative of trade or a locality, the application may be made by any of the following authorities or bodies—

(a) any harbour board, or conservancy authority, the common

council of the City of London, or the council of any county or borough or district; or

- (b) any such association of traders or freighters, or chamber of commerce, shipping, or agriculture as may obtain a certificate from the Board of Trade that it is, in the opinion of the Board of Trade, a proper body to make such an application.

(2) Subject as in this section provided, no company, body, or person not directly interested in the subject-matter of any application shall be entitled to make such application.

(3) Any authority or body as aforesaid may appear in opposition to any application, representation, or submission in any case where such authority, or the persons represented by them, appear to the Board of Trade to be likely to be affected by the decision on any such application, representation, or submission.

(4) The Board of Trade may, if they think fit, require as a condition of giving a certificate under this section, that security be given in such manner and to such amount as they think necessary, for costs which may be incurred.

(5) Any certificate granted under this section shall, unless withdrawn, be in force for twelve months from the date on which it was given.

(6) Any expenses incurred by any such authority in or incidental to any such application or opposition shall be defrayed out of the rate or fund out of which the expenses of the authority in the execution of their ordinary duties are defrayed, and, in the case of a rural district council in England, shall be defrayed as general expenses unless the Minister of Health directs that they shall be defrayed as special expenses.

80.—(1) The provisions of section twenty of the Ministry of Transport Act, 1919 (relating to local inquiries), shall extend so as to enable the Minister to hold local inquiries for the purposes of this Act in like manner as for the purposes of the said Act.

Provisions  
as to  
Inquiries.

(2) Section twenty-three of the Ministry of Transport Act, 1919 (which provides for the establishment of a panel for giving advice and assistance to the Minister in connection with the exercise and performance of his powers and duties), shall extend to the exercise and performance of the powers and duties of the Minister under this Act; and the Minister may add to the panel persons having special experience in the various matters to which the powers and duties of the Minister under this Act relate.

(3) Any expenses incurred by the Minister in relation to any such local inquiry, or an inquiry by a committee chosen either wholly or partly from such panel as aforesaid, shall be paid by the railway companies and other persons concerned in the inquiry, or by such of them and in such proportions as the Minister may direct; and the Minister may certify the amount of the expenses incurred, and any sum so certified and directed by the Minister to be paid by any railway company or other person shall be a debt to the Crown from such company or person.

(4) The rates advisory committee constituted under section twenty-one of the Ministry of Transport Act, 1919, shall continue in existence so long as may be necessary for the purposes of references under the Harbours, Docks and Piers (Temporary Increase of Charges) Act, 1920, and after the said committee ceases to exist any functions which under any other enactments

10 & 11  
Geo. 5, c. 21.

are to be discharged by the committee shall be transferred to the rates tribunal.

Notices etc.

81. Any notice, application, request, or other document authorized or required by this Act to be sent to a railway company may, unless some other manner is prescribed by the rates tribunal, be sent by post in a prepaid letter addressed to the secretary of the company at the principal office of the company.

Mode of action by Board of Trade.

82. Anything by this Act authorized or required to be done by the Board of Trade may be done by the President or a secretary or assistant secretary of the Board, or any person authorized in that behalf by the President.

Application to Scotland.

83. This Act in its application to Scotland shall be subject to the following modifications—

(a) "Burgh" shall be substituted for "borough," "servitude" for "easement," and "Secretary for Scotland" for "Minister of Health":

(b) Sub-section (5) of the section of this Act, whereof the marginal note is "Constitution and procedure of amalgamation tribunal," shall not apply to proceedings before the amalgamation tribunal in Scotland or to inquiries in Scotland by any Commissioner or other person authorized by the said tribunal, and for the purposes of the summoning and examination of witnesses and the production of documents the tribunal or Commissioner or person authorized as aforesaid shall have the like powers as are conferred upon Commissioners by section ten of the Private Legislation Procedure (Scotland) Act, 1899:

(c) The expenses incurred by any town or county council in any application or representation authorized by the section of this Act whereof the marginal note is "Provision for applications by public authorities in certain cases," shall be defrayed in the case of a town council out of the burgh general assessment, and in the case of a county council out of the general purposes rate or such other rate as the county council may with the approval of the Secretary for Scotland designate.

62 & 63 Vict c. 47.

Provisions as to Irish railways.

84.—(1) Railway companies in Ireland shall until other provision is made by the Council of Ireland, compile and render such statistics and returns as are at the passing of this Act in pursuance of any statute agreement or otherwise being rendered by such companies.

(2) Save as aforesaid, the provisions of this Act shall not apply to railway companies in Ireland.

Definition of railway company.

85. For the purposes of this Act, the expression "railway company" includes a joint committee of two or more railway companies and the owners of any railway to which at the passing of this Act a Railways Rates and Charges Order within the meaning of Part III of this Act applies, and, where a railway is owned by a joint committee of two or more railway companies, it shall, for the purposes of this Act, be deemed to be jointly owned by those companies.

Short title and repeal.

86.—(1) This Act may be cited as the Railways Act, 1921.

(2) The enactments mentioned in the Ninth Schedule to this Act are, except so far as they relate to Ireland, hereby repealed to the extent specified in the third column of that schedule, but this repeal shall not, as respects the enactments mentioned in Part II of that schedule, have effect until the appointed day fixed under Part III of this Act; and nothing in this repeal shall



affect the constitution of the Light Railway Commission or the remuneration of any members thereof so long as they continue to perform the duties reserved to them under this Act :

Provided that, for the purpose of the said schedule, the expression "light railway" shall not include a light railway forming part of the system of an amalgamated company, and an amalgamated company owning a light railway shall not, in relation thereto, be deemed to be a light railway company.

## FOURTH SCHEDULE

## DIVISION AND FORM OF SCHEDULES OF CHARGES.

The parts into which every schedule of charges submitted by a company to the rates tribunal is to be divided shall be as follows—

Part I containing the charges in respect of the goods and minerals comprised in the several classes of merchandise (including dangerous goods and goods specially liable to damage) specified in the classification ;

Part II containing the charges in respect of animals ;

Part III containing the charges in respect of carriages ;

Part IV containing the charges in respect of perishable merchandise by passenger train or other similar service ;

Part V containing the charges in respect of small parcels ;

Part VI containing the charges in respect of merchandise of an exceptional character;

Part VII containing the fares and charges to be taken for the conveyance of passengers and their luggage, and for live stock, carriages, parcels and articles of merchandise (other than those included in Part IV) by passenger train or other similar service ;

Part VIII containing the charges in respect of any toll payable by a trader.

The forms of the various Parts shall in the case of Parts V, VI, VII, and VIII, be such as the rates tribunal direct, and in the case of Parts I, II, III, and IV, be the following forms—

## PART I

GOODS AND MINERALS.

[illegible]





## PART IV

### PERISHABLE MERCHANDISE BY PASSENGER TRAIN.

## Division I

### Description

## Division II

Description  
etc.

## Division I

Rate for Conveyance						Station Terminal at each end	Service Terminals	
For any Distance not exceeding 20 Miles	For any Distance exceeding 20 Miles, but not exceeding 50 Miles	For any Distance exceeding 50 Miles, but not exceeding 75 Miles	For any Distance exceeding 75 Miles, but not exceeding 100 Miles	For any Distance exceeding 100 Miles, but not exceeding 150 Miles	For any Distance exceeding 150 Miles		Loading	Un-loading
Per Imperial Gallon <i>d.</i>	Per Imperial Gallon <i>d.</i>	Per Imperial Gallon <i>d.</i>	Per Imperial Gallon <i>d.</i>	Per Imperial Gallon <i>d.</i>	Per Imperial Gallon <i>d.</i>	Per Can <i>d.</i>	Per Can <i>d.</i>	Per Can <i>d.</i>
Per Can <i>d.</i>	Per Can <i>d.</i>	RE TURNED Per Can <i>d.</i>	EMPTY CANS Per Can <i>d.</i>					

## Divisions II and III

Rate for Conveyance						Service Terminals	
For the first Miles, or any part of such Distance	For the next Miles, or any part of such Distance	For the next Miles, or any part of such Distance	For the next Miles, or any part of such Distance	For the remainder of the Distance	Station Terminal at each end	Loading	Unloading
Per Cwt. per Mile <i>d.</i>	Per Cwt. per Mile <i>d.</i>	Per Cwt. per Mile <i>d.</i>	Per Cwt. per Mile <i>d.</i>	Per Cwt. per Mile <i>d.</i>	Per Cwt. <i>d.</i>	Per Cwt. <i>d.</i>	Per Cwt. <i>d.</i>

## FIFTH SCHEDULE

## Section 55.

## MISCELLANEOUS PROVISIONS AS TO RATES.

Calculation  
of distance.

1. In calculating the distance along the railway for the purpose of the charge for conveyance of any merchandise the company shall not include any portion of its railway which may in respect of that merchandise be the subject of a charge for a station terminal.

Calculation  
of charges on  
weight and  
measurement.

2. Unless otherwise agreed between the company and the trader, all charges shall, so far as practicable, be based upon the gross weight of the merchandise when received by the company determined according to the imperial avoirdupois weight, but the rates tribunal may specify any articles of merchandise upon which the charges may be calculated in reference to cubic capacity, and shall prescribe the method by which the cubic contents for the purpose of charge is to be calculated.

Traders'  
trucks.

3.—(1) Where merchandise is conveyed in trucks not belonging to the company, the trader shall be entitled to recover from the company a reasonable sum by way of demurrage for any detention of his trucks beyond a reasonable period either by the company or by any other company over whose railway the trucks have been conveyed under a through rate or contract.

Any difference arising under this provision shall be determined by the rates tribunal at the instance of either party.

(2) Where merchandise conveyed in a separate truck is loaded or unloaded elsewhere than in a shed or building of the company, the company may not charge to a trader any service terminal for the performance by the company of any of the said services if the trader has requested the company to allow him to perform the service for himself, and the company has unreasonably refused to allow him to do so. Any dispute between a trader and the company in reference to any service terminal charged to a trader who is not allowed by the company to perform for himself the service shall be determined by the rates tribunal.

Charges for  
sidings and  
accommoda-  
tion.

4. Nothing in this Act shall prevent the company from making and receiving, in addition to the charges authorized by this Act, charges and payments by way of rent or otherwise for sidings or other structural accommodation provided or to be provided for the private use of traders and not required by the company for dealing with the traffic for the purposes of conveyance :

Provided that the amount of such charges or payments shall be fixed by an agreement in writing signed by the trader or by some person duly authorized on his behalf or determined, in case of difference, by the rates tribunal.

Charges for  
transhipment.

5. In respect of merchandise received from or delivered to another railway company having a railway of a different gauge, the company may make a reasonable charge for any service of transhipment performed by it, the amount of such charge to be determined in case of difference by the rates tribunal.

Charges for  
use of trucks.

6.—(1) The company may charge for the use of trucks provided by it for the conveyance of merchandise, when the provision of trucks is not included in the rates for conveyance, such sums as the rates tribunal determine.

(2) Where, for the conveyance of merchandise other than merchandise in respect of which the rates for conveyance do not include the provision of trucks, the company does not provide trucks, the charge for conveyance shall be reduced by such sum as the rates tribunal determine.

(3) The company shall not be required to provide trucks for the conveyance of merchandise in respect of which the provision of trucks is not included in the rate for conveyance, nor for the conveyance of lime in bulk or salt in bulk or any merchandise liable to injure trucks, but in all such cases traders shall be entitled to provide their own trucks :

Provided that any dispute between the company and a trader as to whether any specific kind of merchandise is liable to injure trucks may be referred to the rates tribunal, but on any such reference it shall lie on the trader requiring the merchandise to be carried to show that such merchandise will not injure the trucks.

7. Where merchandise is conveyed in a trader's truck, the company shall not make any charge in respect of the return of the truck empty, provided that the truck is returned empty from the consignee and station or siding to whom and to which it was consigned loaded, direct to the consignor and station or siding from whom and whence it was so consigned, and, where a trader forwards an empty truck to any station or siding for the purpose of being loaded with merchandise, the company shall make no charge in respect of the forwarding of such empty truck, provided the truck is returned to it loaded for conveyance direct to the consignor and station or siding from whom and whence it was so forwarded.

Return of  
empty  
trucks.

8. Subject to the provisions of this Act, any company conveying merchandise on the railway of another company or performing any of the services for which rates or charges are authorized by this Act, shall be entitled to charge and make the same rates and charges as such other company are authorized to make.

Charges for  
conveyance  
on railway  
of another  
company.

9. Nothing in this Act shall affect the right of a company to make any charges which it is authorized by any Act of Parliament to make in respect of any accommodation or services provided or rendered by the company at or in connection with docks or shipping places.

Dock and  
shipping  
charges.  
Provisions as  
to perish-  
ables.

10. The following provisions and regulations shall be applicable to the conveyance of perishable merchandise by passenger train—

- (a) The company shall afford reasonable facilities for the expeditious conveyance of the articles classified as perishables, either by passenger train or other similar service :
- (b) Such facilities shall be subject to the reasonable regulations of the company for the convenient and punctual working of its passenger train service, and shall not include any obligation to convey perishables by any particular train :
- (c) The company shall not be under obligation to convey by passenger train, or other similar service, any merchandise other than perishables :
- (d) Any question as to the facilities afforded by the company under these provisions and regulations shall be determined by the rates tribunal.

11.—(1) A company may charge for the services hereunder mentioned, or any of them when rendered to a trader at his request or for his convenience a reasonable sum—

Charges for  
services not  
otherwise  
provided for.

- (i) Services rendered by the company at or in connection with sidings not belonging to the company in respect of which no rate or charge is otherwise provided ;
- (ii) The collection or delivery outside a terminal station,

otherwise than is provided for by section forty-nine of this Act, of merchandise which is to be, or has been, carried by railway ;

- (iii) Weighing merchandise ;
- (iv) The detention of trucks or the use or occupation of any accommodation before or after carriage beyond such period as shall be reasonably necessary for enabling the company to deal with the merchandise as carriers thereof, or the consignor or consignee to give or take delivery thereof ; or, in cases in which the merchandise is consigned to an address other than the terminal station, beyond a reasonable period from the time when notice has been delivered at such address that the merchandise has arrived at the terminal station for delivery and services rendered in connection with such use and occupation ;
- (v) Loading or unloading, covering or uncovering, merchandise in respect of which no charge is provided ;
- (vi) The use of coal drops ;
- (vii) The provision by the company of accommodation at a waterside wharf and special services rendered thereat by the company in respect of loading or unloading merchandise into or out of vessels or barges where no special charge is prescribed by any Act of Parliament, provided that the charge under this sub-paragraph shall, for the purposes of any disintegration of rate, be deemed to be a dock charge ;
- (viii) Any accommodation or services provided or rendered by the company within the scope of its undertaking, and in respect of which no provisions are made by this Schedule.

(2) Any difference arising under this paragraph shall be determined by the rates tribunal at the instance of either party, provided that, where before any service is rendered, a trader has given notice in writing to the company that he does not require it, the service shall not be deemed to be rendered at the trader's request or for his convenience.

(3) Subject to the provisions of this paragraph, any charge hereunder made by a company in accordance with an order of the rates tribunal in force for the time being may be recovered by action in a court of law.

12. The standard rate for conveyance is the rate which the company may charge for the conveyance of merchandise by merchandise train and, subject to the exceptions and provisions specified in this Schedule, includes the provision of locomotive power and trucks by the company and every other expense incidental to such conveyance not otherwise herein provided for.

13. The standard station terminal is the charge which the company may make to a trader for the use of the accommodation (exclusive of coal drops) provided and for the duties undertaken by the company, for which no provision is made in this Schedule at the terminal station for or in dealing with merchandise as carriers thereof before or after conveyance.

14. The standard service terminals are the charges which the company may make to a trader for the following services when rendered to or for a trader, that is to say, loading, unloading, covering, and uncovering merchandise, which charges shall, in respect of each service, be deemed to include all charges for



the provision by the company of labour, machinery, plant, stores and sheets.

15. Where a consignment by merchandise train is over three hundredweight, a fraction of a quarter of a hundredweight may be charged for as a quarter of a hundredweight.

16. For a fraction of a mile the company may charge according to the number of quarters of a mile in that fraction, and a fraction of a quarter of a mile may be charged for as a quarter of a mile.

17. Articles sent in large aggregate quantities, although made up of separate parcels such as bags of sugar, coffee, and the like, shall not be deemed to be small parcels.

18. For any quantity of merchandise less than a truck load which the company either receive or deliver in one truck on or at a siding not belonging to the company, or which from the circumstances in which the merchandise is tendered or the nature of the merchandise the company is obliged or required to carry in one truck, the company may charge as for a reasonable minimum load having regard to the nature of the merchandise.

19. The term "terminal station" means a station or place upon the railway at which a consignment of merchandise is loaded or unloaded before or after conveyance on the railway, but does not include any station or junction at which the merchandise in respect of which any terminal is charged has been exchanged with, handed over to, or received from any railway company, or a junction between the railway and a siding let by or not belonging to the company, or in respect of merchandise passing to or from such siding, any station with which such siding may be connected, or any dock or shipping place the charges for the use of which are regulated by Act of Parliament.

The term "siding" includes branch railways not belonging to a railway company.

20. In this Schedule the word "company" means a railway company with respect to which a schedule of standard charges is in operation, and the word "trader" includes any person sending or receiving or desiring to send or receive merchandise by railway.

#### SIXTH SCHEDULE

Act amended	Nature of Amendment
<p>The Carriers Act, 1830. (11 Geo. 4 and 1 Will. 4. c. 68)</p>	<p>In section one, the words "silks in a manufactured or unmanufactured state and whether wrought up or not wrought up with other materials" shall be repealed, and the word "twenty-five" shall be substituted for "ten."</p> <p>In section two the word "twenty-five" shall be substituted for the word "ten."</p> <p>The following new section shall be added after Section 10:—</p> <p>"11. In this Act the expression 'common carrier by land' shall include a common carrier by land who is also a carrier by water, and as regards every such common carrier this Act shall apply to carriage by water in the same manner as it applies to carriage by land."</p>

Act amended	Nature of Amendment
The Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), as incorporated in any Act, whether passed before or after the passing of this Act.	<p>In section three after the words "The word 'toll' shall include any rate or charge or other payment payable under the special Act," there shall be inserted the words "or fixed by the rates tribunal under the provisions of the Railways Act, 1921."</p> <p>In section ninety-eight for the words "number or quantity of goods conveyed by any such carriage" there shall be substituted the words "full name and address of the consignee and such particulars of the nature, weight (inclusive of packing), and number of parcels or articles of merchandise handed to the company for conveyance as may be necessary to enable the company to calculate the charges therefor."</p> <p>The following sub-section shall be added at the end of section ninety-eight—</p> <p>"(2) The company shall be entitled to refuse to convey any merchandise delivered to them for conveyance as aforesaid in respect of which the foregoing provisions of this section have not been complied with, or to examine, weigh or count the same and make such reasonable charge therefor as they think fit:</p> <p>"Provided that the company shall not refuse to convey the parcels or articles of merchandise handed to them for conveyance as aforesaid without giving the person an opportunity of having them weighed or counted upon payment of a reasonable charge."</p>
The Railways Clauses (Scotland) Act, 1845 (8 & 9 Vict. c. 33), as incorporated in any Act, whether passed before or after the passing of this Act.	<p>In section three after the words "The word 'toll' shall include any rate or charge or other payment payable under the special Act" there shall be inserted the words "or fixed by the rates tribunal under the provisions of the Railways Act, 1921."</p> <p>In section ninety-one, for the words "number or quantity of goods conveyed by any such carriage" there shall be substituted the words "full name and address of the consignee and such particulars of the nature, weight (inclusive of packing), and number of parcels or articles of merchandise handed to the company for conveyance as may be necessary to enable the company to calculate the charges therefor."</p> <p>The following sub-section shall be added at the end of section ninety-one—</p> <p>"(2) The company shall be entitled to refuse to convey any merchandise delivered to them for conveyance as aforesaid in respect of which the foregoing provisions of this section have not been complied with, or to examine, weigh, or count the same and make such reasonable charge therefor as they think fit:</p> <p>"Provided that the company shall not refuse to convey the parcels or articles of merchandise handed to them for conveyance as aforesaid</p>

Act amended	Nature of Amendment
The Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31).	without giving the person an opportunity of having them weighed or counted upon payment of a reasonable charge." In section seven, for the words "for any horse fifty pounds, for any neat cattle per head fifteen pounds, for any sheep or pigs per head two pounds" there shall be substituted the words "for any horse one hundred pounds, for neat cattle per head fifty pounds, for any other animal five pounds."
The Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), as incorporated in any Act, whether passed before or after the passing of this Act.	Section thirty-one shall be repealed.
The Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119).	In section thirty-four after the words "to act as directors" there shall be inserted the words "Provided that it shall not be obligatory on any such company to reprint such book in any year if in their opinion the prescribed corrections can conveniently be made in manuscript."

## NINTH SCHEDULE.

## ENACTMENTS REPEALED.

## PART I

Session and Chapter	Short Title	Extent of Repeal
57 & 58 Vict. c. 54	The Railway and Canal Traffic Act, 1894	Section one.
59 & 60 Vict. c. 48	The Light Railways Act, 1896	Sub-sections (1), (3), (4), (5), (6), and (7) of section one. Section four. Section five except proviso (c) to sub-section (1) thereof. Section six. Sub-sections (5) and (6) of section seven. Section eight. Sub-sections (2), (5), and (6) of section 9. In sub-section (1) of section nine the words "for confirmation." In section fifteen the word "whether" and the words "or before the Light Railway Commissioners," "or the Light Railway Commissioners," and "and of the proceedings of the Light Railway Commissioners." In section twenty-two the words "the Light Railway Commissioners, or if any objection to any draft order is made to

PART I—*continued*

Session and Chapter	Short Title	Extent of Repeal
1 Edw. 7. c. 36	The Light Railways Commissioners (Salaries) Act, 1901	the Commissioners and " and " respectively." The whole Act.
2 & 3 Geo 5. c. 19	The Light Railways Act, 1912	Sub-section (1) of section one. Section two. Section three. Section eight. In subsection (1) of section nine the words " subject to the special provisions of this Act with respect to the Light Railway Commissioners acting as arbitrators." Section ten.
2 & 3 Geo. 5. c. 29	The Railway and Canal Traffic Act, 1913	The whole Act.
10 & 11 Geo. 5. c. 14	The Tramways (Temporary Increase of Charges) Act, 1920	In section two the words " the Light Railway Commissioners and."
10 & 11 Geo. 5. c. 73	The Expiring Laws Continuance Act, 1920	Part I of the Schedule as far as it relates to the powers of the Light Railway Commissioners.

## PART II

Session and Chapter	Short Title	Extent of Repeal
36 & 37 Vict. c. 48	The Regulation of Railways Act, 1873	Section fourteen, except so far as it relates to light railway and canal companies, and section fifteen, except so far as it relates to canal companies.
51 & 52 Vict. c. 25	The Railway and Canal Traffic Act, 1888	Section twenty-five from " Provided that no application " to the end of the section, and sections twenty-six, thirty-one, thirty-three, and thirty-four, except so far as those sections, including the said section twenty-five, relate to canals and canal companies, or to through rates where part of the through rate is over a canal, and except so far as sections thirty-three and thirty-four relate to light railways and light railway companies.
57 & 58 Vict. c. 54	The Railway and Canal Traffic Act, 1894	Section three, except so far as it relates to light railway and canal companies, and section four.

## THE RAILWAY RATES TRIBUNAL RULES.

THE RAILWAY RATES TRIBUNAL RULES, 1922, DATED JUNE 27, 1922, MADE BY THE RAILWAY RATES TRIBUNAL WITH THE APPROVAL OF THE LORD CHANCELLOR, THE LORD PRESIDENT OF THE COURT OF SESSION AND THE MINISTER OF TRANSPORT, UNDER SECTION 22 OF THE RAILWAYS ACT, 1921.

By virtue of the provisions of "The Railways Act, 1921," 11 & 12, Geo. 5, c. 55, the Railway Rates Tribunal, with the approval of the Lord Chancellor, the Lord President of the Court of Session and the Minister of Transport, do hereby make the following Rules—

### *Interpretation.*

1. These Rules may be cited as the Railway Rates Tribunal Rules, 1922, and shall come into operation on the 15th day of July, 1922.

2. In the construction of these Rules and the forms herein referred to, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, the word "person" shall include a firm, association, authority or body corporate, and the following terms shall (if not inconsistent with the context or subject-matter) have the respective meanings hereinafter assigned to them; that is to say, "application" shall include any representation or submission or reference which may be made to the Court; "applicant" shall include all persons making any application to the Court; "respondent" shall mean the persons against whom the application is made, or any persons on whom it is directed that an application shall be served or who may be added as respondents to an application; "cause" shall include any proceeding before the Court in accordance with the Railways Act, 1921, or these Rules; "writing" shall include typewriting, printing, lithography, or script mechanically produced. Terms defined by the Railway and Canal Traffic Acts, 1873 and 1888, and the Railways Act, 1921, shall, unless there be something repugnant thereto in the context, have, in these Rules, the same meanings that are assigned to them by those Acts. Any reference in these Rules to the Railways Act, 1921, shall be deemed to include a reference to any statutory modification thereof which shall be enacted by Parliament.

Interpreta-  
tion of  
terms.

3. Where under these Rules it is directed that any document shall be signed by any party or person, such document may in the case of a firm be signed by any person having authority to sign the firm's name, and in the case of a body corporate, association or authority may be signed by the chairman, president, managing director, general manager or secretary of the body corporate, association or authority, or by any person authorized under the seal of the body corporate to sign on its behalf.

As to  
signing of  
documents.

### *Appointment of Registrar.*

4. There shall be appointed a Registrar of the Court (hereinafter called "the Registrar"), who shall perform the duties and exercise the functions hereinafter set forth and such other

Registrar.



functions as may be directed by the Court. In the event of a vacancy in the office of Registrar or of the Registrar being absent or unable to perform his duties the Court may appoint any officer of the Court or other person to act for the time being as Registrar, and such deputy Registrar shall during the time for which he is so appointed have all the powers and exercise all the functions of the Registrar. The Registrar shall have his office in London, but may, with the consent of the President, sit to hear applications in Scotland, or in such other place as, having regard to all the circumstances, may be convenient.

*Parties and Persons Attending Proceedings.*

Applicant.

5. An applicant seeking relief or asking for a declaration from the Court shall initiate proceedings by an application in writing lodged with the Registrar. Two or more persons may join in an application, in which case all subsequent proceedings shall be in their joint names, and they shall not be entitled to sever in respect of any such proceedings. Where there is more than one applicant they shall nominate in the application some person, being either one of the applicants or a solicitor or some person in the regular employment of one of the applicants, as the person on whom any summons or notice may be served as representing all the applicants.

Respondent.

6. In all cases other than those provided for by Rules 7 and 8 hereof, the applicant shall name in his application as respondents such persons as may, to the best of his judgment and belief, be directly and substantially affected by the relief or declaration asked in the application.

Applications  
under  
Sections 28,  
35, 39, 45  
and 50 of the  
Railways  
Act, 1921.

7.—(1) Upon an application under any of the following provisions of the Railways Act, 1921, that is to say: Section 28, Sub-section (1) (a) relating to classification of merchandise, Sub-section (1) (c) relating to group rates, Sub-section (1) (g) relating to the reasonableness of conditions as to packing, Sub-section (1) (h) relating to the articles and things that may be conveyed as passengers' luggage, or under Section 35 relating to the modification of standard charges (including passenger fares) or the conditions relative thereto, Section 39 relating to competitive exceptional rates, Section 45 relating to the alteration of terms and conditions for the carriage of goods, Section 50, Sub-section (3) relating to questions whether goods are dangerous, the application may be in the Form No. 3 in the First Schedule hereto, and it shall not be necessary in the first instance to name any person as respondent, but in the application under the said Sections or Sub-sections the applicant shall include a request for directions as to the persons on whom the application is to be served, or to whom notice is to be given of such application, and the applicant shall attend before the Registrar on a day to be appointed by him when the Registrar shall give directions as to the persons to be served with copies of such application, or to whom notice of such application is to be given, and as to whether any, and, if so, what, public notice by advertisement or otherwise shall be given thereof, and the applicant shall serve copies of the application accordingly and give such notices as may be directed by the Registrar or the Court. In the case of notices to be given to persons entitled to object to the application the Registrar or the Court may by order limit the time within which notice of objection is to be given, but the time so limited may subsequently be extended.

All notices under this rule directed by the Registrar or the Court to be given shall be given by and at the cost of the applicant.

(2) Any person on whom it is so directed that a copy of the application is to be served shall be deemed to be a respondent to the application and a party to all proceedings thereon and his name shall be inserted as such respondent in all subsequent proceedings and he shall put in an answer to the application as prescribed by these rules.

(3) The copy of the application to be served as above mentioned shall be indorsed as provided by Rule 15 hereof and shall be accompanied by a notice in accordance with Form No. 4 in the First Schedule thereto. The notices to be given of an application as above provided shall be in accordance with Form No. 5 in the First Schedule hereto.

(4) After the expiration of the period limited within which notice of objection is to be given, if notice of objection shall have been given by only one person, such person shall be deemed to be respondent to the application and a party to all proceedings thereon, and his name shall be inserted in all subsequent proceedings; but if notice of objection shall have been given by more than one person the applicant shall apply by summons for a direction as to whether all or some or one and, if so, which, of the objectors shall be added as respondents or a respondent, and whether any and, if so, which, of the respondents is to be appointed under Rule 9 hereof as a representative respondent or representative respondents and such summons shall be served on all the objectors. Upon the return of such summons the Registrar shall make such order thereon as may seem proper.

(5) In the case of a reference by the Minister of Transport to the Court under Section 39 relating to competitive exceptional rates, the body of persons who have made representations to the Minister as the result whereof the reference is made shall be deemed to be the applicant and shall proceed accordingly.

8.—(1) In matters arising under the following Sections of the Railways Act, 1921, that is to say: Section 31 relating to the Standard Schedules of Charges to be adopted by the railway companies, Section 33 relating to the application of Schedules of Charges to non-amalgamated companies, Section 43 relating to the settlement of the terms and conditions on which merchandise will be carried, Section 46, Sub-section (1) relating to owner's risk rates, Section 59 relating to the periodical review of standard charges and exceptional rates, and Sub-sections (i) and (iii) of the proviso to Section 60 relating to the reduction or increase of charges (including passenger fares) before the appointed day, any application shall in the first instance be brought before the Court *ex parte*, and the Court or Registrar shall give directions as to the manner and time of hearing and what public notice by advertisement or otherwise is to be given in relation to such hearing, and may prescribe in such directions and notice the time within which and the manner in which persons desirous of attending and being heard shall intimate such desire, and may direct that a person failing to give such intimation shall not be entitled to be heard. All notices under this Rule required by the Court or Registrar to be given shall be given by and at the cost of the applicant.

(2) In the case of any reference to the Court by the Minister of Transport under Section 37, Sub-section (2), or Section 41, Sub-section (2), relating respectively to new exceptional rates

Applications under Sections 31, 33, 43, 46, 59 and 60 of the Railways Act, 1921.

and fares which in the opinion of the Minister of Transport a company is granting in such manner as to affect prejudicially a class of users of the railway or so as to jeopardize the realisation of the Standard Revenue of such company; the Court shall cause public notice to be given of the date when such reference will be heard, stating that any party interested who shall give notice, not less than four days before the date so fixed, of his intention to appear will be entitled to be heard, and on the day so fixed or on any other day to which the hearing may be adjourned such person as the Minister of Transport shall appoint shall appear as applicant and bring the matter before the Court, and the railway company interested shall appear as respondent, and any other person interested who shall have given notice of intention to appear as aforesaid shall be entitled to be heard thereon.

(3) In the case of a reference by the Minister of Transport under Section 52, Sub-sections (3) and (4) relating to circuitous routes, the railway company submitting the schedule of circuitous routes shall be deemed to be the applicant and the proceedings shall be had in accordance with the provisions of this rule.

#### *Representative Parties.*

Representative parties.

9.—(1) If the persons who are interested in an application are numerous one or more of such persons may, by order of the Court or Registrar, be appointed to act as a representative respondent or representative respondents, and be authorized to defend in the matter of the application on behalf of and for the benefit of all persons concerned, or on behalf of or for the benefit of such class or classes of persons as may be specified in the Order appointing the representative respondent or any subsequent Order.

(2) The railway companies, or any of them, may, by notice given under their respective common seals and lodged with the Registrar, appoint any committee or collective body named in such notice to act as the representative of the railway companies giving such notice in any proceedings in which such railway companies or a number of them are interested. Where such appointment has been made the committee or collective body so named may in its collective name make any application which any two or more of the companies making the appointment might have made, but shall in such application give particulars stating the names of the railway companies for which it is acting on the occasion in question as representative; and in any case where three or more railway companies making such appointment are concerned in the matters arising or likely to arise from any application the Court or Registrar may give leave to the applicant to make the committee or collective body respondent to the application in place of the railway companies so concerned, and in such case the said committee or collective body shall have authority to defend in the matter of the said application on behalf of the railway companies so concerned.

10.—(1) Any person who in accordance with the provisions of the Railways Act, 1921, or these Rules, is entitled to be heard upon an application and is not named as a respondent thereto and is not a person on whom the Registrar has directed that a copy of the application shall be served may within the time limited by the directions of the Registrar, or within such extended time as may be allowed by the Registrar or the Court, or if no

Opposition by persons interested.

such time has been limited then at any time but not later than four days before the hearing of the application, give notice in writing to the applicant and to the Registrar in accordance with Form No. 6 in the First Schedule hereto that he takes objection to the relief or declaration asked for in the application and that he desires to be heard thereon, and on giving such notice he shall be entitled to attend and be heard on the occasion of the hearing of the application, but shall not be entitled to receive notice of or attend upon any interlocutory proceedings unless the Court or the Registrar shall give special leave.

(2) Where the Court or Registrar is satisfied that the persons interested or concerned in the matter of an application are sufficiently represented by a respondent who is already before the Court, the Court or Registrar may direct that any other person claiming or obtaining leave to attend or be heard shall bear any additional costs incurred by reason of the service upon him of notices or otherwise, and may from time to time require the deposit by him of a reasonable sum to defray such costs as a condition of allowing the service of notices upon him.

#### *Joinder of Parties.*

11. No application shall be defeated by reason of the misjoinder or nonjoinder of parties, but the Court or Registrar may at any stage of the proceedings, on such terms as may seem just, direct the joinder either as applicant or respondent of any person whose presence before the Court is in their view proper or necessary for adjudication upon the questions involved in the application, but so that no person shall be added as an applicant without his consent in writing.

Misjoinder  
or nonjoinder  
of parties;  
adding  
parties.

#### *Application to the Court.*

12—(1) The application initiating any proceeding before the Court shall be in writing, and signed by the applicant. It shall contain a clear and concise statement of the facts forming the ground of application, and the relief or remedy to which the applicant claims to be entitled or of the matter for the determination of the Court as the case may require. It shall be divided into paragraphs numbered consecutively. It shall be indorsed with the name and address of the applicant, and, if there be a solicitor acting for him in the matter, with the name and address of such solicitor, and if he be an agent for another solicitor in the matter, then also with the name and address of such other solicitor.

Proceedings,  
how com-  
menced and  
form of  
application  
generally.

(2) Every application other than an application made under Rule 7 or Rule 8 or Rule 60, paragraph (3), shall be according to Form No. 1, set out in the First Schedule hereto or to the like effect, and any application under Rule 7 or Rule 8 or Rule 60, paragraph (3), shall be according to the Form No. 3, set out in the First Schedule hereto or to the like effect.

#### *Filing Application.*

13. Every application shall be stamped with the appropriate stamp and filed with the Registrar at the office of the Court, and four copies of the application shall also be left with the Registrar. The Registrar shall make out a list of the applications so filed according to the order in which they are received by him, and

Filing  
application  
at the Court  
Office.  
List of  
applications.



such list may be inspected at the office of the Court during office hours. Each application shall be marked with the year in which it is filed and a serial number representing its place in the list of applications for that year. The year and serial number shall be placed at the head of all documents relating to the cause.

Court may  
require  
further  
copies of  
documents.

14. Whenever additional members are added to the Court under Section 24, Sub-section (4) of the Railways Act, 1921, and on such other occasions as the Court or Registrar shall direct, such number of additional copies of the application and other documents as the Court or Registrar may require shall be furnished to the Registrar by the party filing or proposing to use the same.

#### *Indorsement upon Application.*

Indorsement  
upon appli-  
cation.

15. A copy of the application shall be indorsed with a notice to the respondent requiring him to put in an answer to the application within fifteen days from the service thereof, and stating that in default of such answer being put in within the time named, or any extension thereof duly granted, the Court may proceed to hear the said application in his absence. Such indorsement shall be according to Form No. 2 in the First Schedule hereto, and shall be sealed by the Registrar with the seal of the Court.

#### *Service of Application, Summons, etc.*

Service of  
application.

16.—(1) A copy of the application signed and indorsed as required by Rules 12 and 15 shall be served upon each respondent by leaving the same with him or with his manager, secretary or clerk at his principal office or place of business in any part of the United Kingdom, or in such other manner as the Court may direct; but when the respondent's solicitor undertakes in writing to accept service on his behalf, service of the copy of the application may be effected by leaving the same at the office of such solicitor, and no personal service shall be necessary.

Service of  
Summons,  
Notice, etc.

(2) Service of any summons, notice or other document which by the terms of these Rules or any order of the Court or Registrar is required to be served on any party or person may be effected on him in the manner hereinbefore directed for the service of the copy of the application on the respondent.

Court may  
direct  
service by  
registered  
post.

(3) The Court or Registrar may direct that any application, answer, summons, notice or other document shall be served by being sent through the post as a registered letter addressed to the person on whom it is to be served at his last known residence or at his principal place of business in any part of the United Kingdom or at any address given by him in any application, answer, or notice made or given in pursuance of these Rules.

#### *Consent Cases.*

Parties  
dispensing  
with formal  
proceedings.

17. In all cases the parties may, by consent in writing, dispense with the formal proceedings hereinafter mentioned, or some portion of them, and orders by consent may be drawn up, and, if approved of by the Court, may be sealed with the seal of the Court.

#### *Answer.*

Form of  
and time for  
filing and  
delivery of  
answer.

18.—(1) Within 15 days from the service upon the respondent of the application, or within such shorter or extended time as may be fixed by the Court or Registrar, the respondent shall file



with the Registrar an answer to the application, and leave with him four copies of the same, and the respondent shall, within such time, serve on the applicant or his solicitor a signed copy of the answer. The answer shall contain a clear and concise statement of the facts which form the ground of defence, or of any other objections relied upon. It may admit the whole or any part of the facts stated in the application. It shall be divided into paragraphs numbered consecutively, and it shall be signed by the person actually making the same, and who is acquainted with the facts stated therein. It shall be indorsed with the name and address of the respondent, and, if there be a solicitor acting for him in the matter, with the name and address of such solicitor, and if he be an agent for another solicitor in the matter, then also with the name and address of such other solicitor.

(2) In the case of an answer to an application in Form No. 1 it shall be according to the Form No. 7 set out in the First Schedule hereto or to the like effect, and in the case of an answer made to an application in Form No. 3, it shall be according to Form No. 8 set out in the First Schedule hereto or to the like effect.

(3) If a respondent shall claim any relief against the applicant in connection with the matters which form the subject of the application, or any of them, he may include in his answer a counter application claiming such relief, and any answer may, after it has been delivered, be amended by leave of the Court or Registrar by the addition thereto of such a counter application as aforesaid, subject, however, to such conditions (if any) as the Court or Registrar may impose as a term of granting such leave. The Court or Registrar, if of opinion that the inclusion of a counter application will hinder, delay or embarrass the hearing of the application, may direct that the counter application shall be struck out of the answer, without prejudice to the right of the respondent to renew his claim by way of an original application.

(4) Upon lodgment of the answer, the Registrar shall send a copy of the application and the answer to the Minister of Transport.

#### *As to Pleadings and Further Conduct of Case.*

19.—(1) Within 10 days after the answer of the respondent shall have been lodged the applicant shall lodge with the Registrar a summons for directions as to pleadings, place and mode of trial, and the general conduct of the cause. Such summons shall include any application which the applicant may desire to make for leave to amend, particulars, discovery and production of documents, leave to administer interrogatories, and generally as to the conduct of the cause, and for prescription of any matter or thing which is, in reference to the cause, required by the Railways Act, 1921, to be prescribed by the Court, and the Registrar will thereupon fix a date and time for hearing such summons.

(2) Such summons shall be according to Form No. 9 set out in the First Schedule hereto, or to the like effect, and shall be in writing and signed by the applicant or his solicitor and be sealed by the Registrar with the Seal of the Court, and a copy thereof shall be served upon each of the other parties to the cause with a notice stating the date and time fixed by the Registrar for the hearing of such summons.

Summons for directions as to Pleadings and further conduct of case.

Form and Service of the summons.

Cross-  
summons  
for other  
directions.

(3) Not later than two days prior to the date so fixed, any respondent may lodge with the Registrar a notice in the nature of a cross-summons according to the Form No. 10 set out in the First Schedule hereto, or to the like effect (a duplicate being at the same time sent by such party to each of the other parties to the cause), for such further or other directions as he may desire in addition to those applied for by the applicant.

Order on  
summons.

(4) The Registrar may make such Order on the summons for directions and cross-summons (if any) as may appear necessary, or may adjourn the matter to be disposed of by the Court.

Adjourn-  
ment and  
restoration  
of summons.

(5) The Court or Registrar may adjourn the whole or any part of the summons and cross-summons to a later date or generally, and when such summons or cross-summons is adjourned it may be restored by any party on giving not less than four days' notice to the other parties.

Holding of a  
preliminary  
meeting may  
be directed.

(6) If it appear to the Court or to the Registrar that it will be of advantage to the parties to hold a preliminary meeting or inquiry, they or he may so direct, and the parties shall attend such meeting or inquiry at such place and time as the Court or Registrar may appoint. Such meeting or inquiry may be held as directed by the Court or Registrar for such purpose or purposes as may be directed.

Application  
for members  
of panels to  
be added to  
Court.

(7) If either party intend to request the appointment of additional members of the Court from the panels set up under Section 24 of the Railways Act, 1921, such party shall include such request in his summons or cross-summons for directions, but the Court may in its discretion allow an application for the purpose aforesaid to be made at any time not later than 21 days before the date fixed for the hearing of the cause or in the case of a cause being placed in the list of causes for hearing not later than 21 days before the date fixed as the date before which the cause is not to be heard.

#### *Preliminary Communication with the Parties.*

Court may  
communicate  
with parties.

20. The Court may, if it think fit, at any time during the proceedings communicate with the parties in writing, and may require answers to such inquiries as it may think fit to make.

#### *Pleadings after Answer by Leave Only.*

Pleadings  
after answer.

21. No pleading subsequent to answer shall be pleaded without leave of the Court or Registrar.

#### *Amendment.*

Power of  
Court to  
order  
amendment  
of pleadings.

22. The Court or Registrar may at any stage of the proceedings allow any pleadings to be amended, or may order to be struck out any matters which may tend to prejudice, embarrass, or delay the fair hearing of the cause, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

#### *Power to Direct and Settle Issues.*

Court may  
direct issues.

23. If it appear to the Court or Registrar at any time that the statements in the application, answer or further pleadings do not sufficiently raise or disclose the issues in dispute between the parties, they or he may direct the parties to prepare issues,

and such issues shall, if the parties differ, be settled by the Court or Registrar.

*Close of Pleadings by Implied Joinder.*

24. If it be directed that no pleading shall be delivered subsequent to the answer, then as from the delivery of the answer the pleadings shall be deemed to be closed. If it be directed that any further pleading shall or may be delivered, then as from the delivery of such further pleading or upon the expiration of the period allowed for that purpose, whichever shall be the earlier, the pleadings shall be deemed to be closed, and upon the close of the pleadings all material statements of fact contained in the pleading last delivered shall be deemed to be denied and put in issue.

Close of pleadings.

*Interrogatories.*

25.—(1) Any party may apply by summons to the Registrar for leave to deliver interrogatories in writing for the examination of the opposite party. Any interrogatories proposed to be administered shall first be submitted to the Registrar and only such as are allowed by him or the Court shall be administered.

Interrogatories.

(2) Interrogatories shall be answered by affidavit to be filed within 10 days or within such other time as the Court or Registrar may allow. The interrogatories may be answered partly by one person and partly by another or others, but in all cases the party answering any part thereof shall state in his answer that the matters stated by him are within his personal knowledge, and if any person interrogated omits to answer or answers insufficiently, the party interrogating may apply to the Court or Registrar for an Order requiring him to answer, or to answer further, as the case may be.

(3) No payment into Court of a sum of money as deposit shall be required from a party seeking discovery by interrogatories or otherwise.

*Discovery and Production of Documents.*

26.—(1) Either party may, without filing any affidavit, by summons, apply for an order directing the other party to make discovery of the documents which are or have been in his possession or power relating to the matter in question. Such application may be included in the summons for directions, but in any other case shall be served on the other party not less than three days before the hearing thereon. The summons shall specify the character and description of the documents of which discovery is sought.

Applications for discovery.

(2) The Court or Registrar may, on hearing such application direct that a list of documents shall be delivered without requiring that the same shall be verified by oath, or may, either upon the original hearing of the application for discovery or subsequently, direct that discovery shall be made on oath. The Court or Registrar shall fix the time within which such list of documents or discovery is to be given.

List of documents or discovery on oath may be ordered.

(3) The Court or Registrar may, at any time during the pendency of any cause, order the production by any party thereto of such of the documents in his possession or power relating to the matters in question as the Court or Registrar shall think fit.

Production of documents.

*Documents Referred to in Pleadings.*

Documents referred to in pleadings.

27.—Either party shall be entitled at any time before or at the hearing of the cause to give a notice in writing to the other party in whose application or answer or other pleading reference is made to any document, to produce it for the inspection of the party giving such notice, or of his solicitor, and to permit him to take copies thereof, and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such proceeding without the leave of the Court, unless he satisfy the Court that he has sufficient cause for not complying with such notice.

*Notice to Produce and Admit Documents.*

Notice to produce.

28.—(1) Either party may give to the other a notice in writing to produce such documents as relate to any matters in difference (specifying the said documents), and are in the possession or control of such other party, and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.

Notice to admit.

(2) Either party may give to the other party a notice in writing to admit any documents saving all just exceptions, and in case of neglect or refusal to admit after such notice, the cost of proving such documents shall be paid by the party so neglecting or refusing, whatever the result of the application may be, unless at the hearing the Court certify that the refusal to admit was reasonable, and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

*Notice of Discontinuance.*

Notice where application withdrawn or settled.

29. When any application made to the Court has been withdrawn or settled, the applicant shall immediately thereupon give notice thereof to the Registrar.

*Right of Audience before Court.*

Right of audience.

30.—(1) Any party may appear and be heard in person, by counsel or solicitor, and, where the party is a firm, any partner may appear on behalf of the firm.

Appointment of representative.

(2) (a) A party may appoint a person who is in his regular employment to act as his representative in any proceedings, and if the appointment is duly made in accordance with these Rules, such representative shall be entitled to appear and be heard on all occasions when his principal might so appear, and to do in connection with the proceedings covered by his appointment any act or thing, or give any consent, or receive any notice, or otherwise represent the party appointing him as fully as the party himself could do.

(b) Any such appointment may be in respect of a particular application or of particular proceedings or general for a period not exceeding one year, provided the person appointed shall so long remain in the employment of the party appointing him.

(c) Any such appointment as aforesaid shall be in writing and shall be signed by the party making the appointment.

(d) Any such appointment may be revoked, renewed, extended or varied by a writing signed by the party.



(e) Every such appointment or any revocation, renewal, extension or variation thereof shall be in duplicate, whereof one part shall be filed with the Registrar before the representative shall act thereon, and the other part shall be retained by the person appointed as representative.

(f) No revocation or variation of an appointment shall be operative until filed with the Registrar.

(3) For the purposes of this Rule the word "party" shall include any person, firm, association, authority or body corporate entitled to appear at the hearing of any application.

(4) Where any association of traders or freighters or chamber of commerce, shipping or agriculture, propose to make any application, or to appear in opposition to any application, representation or submission in accordance with the provisions of Sections 35, 38 (6), 43, 45, 60 (i), or 78, of the Railways Act, 1921, they shall, before or at the time of making such application or so appearing, file with the Registrar a certificate of the Board of Trade given in accordance with the said Section 78.

Appearance  
by association  
or chamber.

(5) Where any person, not being the applicant or a respondent, shall claim to be heard as being a person interested, he shall at least four days before the commencement of the hearing lodge with the Registrar a notice setting forth his name, description and address and the nature of his interest, and stating whether he supports or opposes the application before the Court, and, if he desires any modification or variation of the proposals before the Court, particulars of such modification or variation, and shall at the same time serve copies of such notice upon every party to the cause.

Appearance  
of person  
interested.

(6) Where by the terms of the Railways Act, 1921, it is provided that a "representative body of traders" may make or oppose any application, the Court may require the person or persons claiming audience on behalf of any such body of traders to give particulars in respect of such body, showing its constitution and the nature of its interest in the question before the Court.

Appearance  
by represen-  
tative body  
of traders.

(7) The Court may permit any person whom it shall deem likely to be able to assist it to address the Court notwithstanding any failure to comply with the provisions of this Rule; and may waive or extend the time for compliance with this Rule upon such terms and conditions as it shall think fit, including a condition of undertaking to bear and pay any costs incurred by reason of an adjournment becoming necessary.

Court may  
hear any  
person likely  
to assist.

(8) Where the Minister of Transport shall notify the Court that he intends, in pursuance of Section 22 (2) of the Railways Act, 1921, to appear upon any proceedings before the Court, he shall not less than seven days before the commencement of the hearing lodge with the Registrar a notice of his intention to appear with a statement of the matters in respect to which he desires to be heard.

### *Appointing Date of Hearing.*

31.—(1) If the respondent make default in putting in his answer the applicant or, at any time after the pleadings are closed, any party may apply to the Registrar to fix a date for the hearing. No such application shall be made without two days' previous notice in writing to each of the other parties.

Application  
to fix date  
of hearing.

(2) The Registrar may either fix a named day for the hearing of any cause, or may direct that the cause shall be placed in the

Appointment  
of date.



Notice of  
date of  
hearing.

Order of  
hearing  
applications.

Plans,  
documents,  
etc., to be  
deposited.

Attendance  
of witnesses.

Evidence  
may be oral  
or by  
affidavit.

Evidence by  
affidavit.

Directions as  
to evidence.

Documents  
used without  
objection.

list of causes for hearing to come on in due rotation, with a direction that the same shall not be heard before a named day.

(3) If the Order fixing a day for hearing or directing that the cause be placed in the list of causes for hearing shall have been made in the absence of any party, the party who has applied for the fixing of a day for hearing shall give notice to the absent party of the terms of the Order.

(4) The applications shall be heard by the Court so far as may in their judgment be practicable, according to the order in which they are entered in the list of causes for hearing, and a named day shall not, except upon good cause shown, be fixed for the hearing of a cause in such manner as to give such cause precedence over causes which have been previously entered in the list of causes for hearing and are ripe for hearing.

(5) The parties shall leave with the Registrar, six days before the day fixed for the hearing, or the day fixed as the day before which the cause shall not be heard (as the case may be), any maps, plans, diagrams, cartoons, tables or schedules of figures and Special Acts, or other documents referred to in the application, answer or other pleading, or which may be useful in explaining or supporting the same. Any maps, plans, diagrams, cartoons, tables or schedules of figures or other documents shall as far as possible be agreed by the parties before the hearing.

#### *Witnesses.*

32. The attendance of witnesses, with or without documents, shall be enforced by subpoena, which may be sued out by either party requiring the attendance of such witness. Such subpoena shall be according to Forms Nos. 13 or 14 in the First Schedule hereto, and shall be sealed by the Registrar with the seal of the Court, and may be served in any part of Great Britain. The witnesses shall be entitled to the same protection as when subpoenaed or cited to attend a Superior Court, and the laws and practice in force for the time being relating to witnesses in a Superior Court shall apply to them in proceedings before the Court.

#### *Evidence may be Oral or by Affidavit.*

33.—(1) The evidence at the hearing of an application may be taken either by affidavit or viva voce, or partly one and partly the other. Provided that if either party intends to rely on any evidence by affidavit they or he shall, seven days at least before the hearing, deliver or send by post to the other party a copy of any affidavit intended to be used, or in default shall not be allowed to use the same except by special leave of the Court.

(2) Either party may, within four days after receipt of a copy of any affidavit intended to be so used, give to the other party a notice requiring the deponent to be produced at the hearing of the application for cross-examination, and unless the deponent is so produced, his affidavit shall not be used unless by special leave of the Court.

(3) The Court may in its discretion direct evidence at the hearing of an application to be taken either by affidavit or viva voce, or that any particular facts shall be proved by affidavit, and may give such directions in regard thereto as it thinks fit.

(4) Where any document has been used at the hearing without objection taken thereto at the time of its use, the Court may accept such document in evidence without strict proof of its authenticity.

*Affidavits.*

34. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory proceedings, on which statements as to his belief with the grounds thereof may be admitted.

Contents of affidavits.

35.—(1) Any affidavit used in any proceeding before the Court may be sworn as follows—

Swearing affidavits.

In England and Wales before the Registrar, or the Officer appointed by the Court to administer oaths in proceedings before it, or before a person authorized to administer oaths in any of the Superior Courts, or before a Commissioner empowered to take or receive affidavits.

In Scotland, in addition to the above-mentioned persons, before any Sheriff-Depute or his substitute.

In any place in the British Dominions out of Great Britain, before any Court, Judge, or any person authorized to administer oaths there in any Court.

In any place out of the British Dominions, before a British Minister, Consul, or Vice-Consul.

(2) The Court shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, Minister, Consul, or Vice-Consul, attached, appended, or subscribed to any such affidavit.

36. Affidavits used in any proceedings before the Court shall be filed in the office of the Registrar, and office copies of the same and of other documents filed may be procured by the parties on application to the Registrar.

Filing of, and giving office copies of, and of other documents.

*Interlocutory Applications.*

37.—(1) Where not otherwise provided for in these Rules, all interlocutory applications shall, unless otherwise specially ordered, be heard by the Registrar upon summons duly served, and may be determined in a summary way. Any such summons shall be in accordance with Form No. 11 in the First Schedule hereto and be sealed by the Registrar with the Seal of the Court. Such application may, if the Registrar thinks fit, be adjourned by him to the Court for hearing.

Interlocutory applications.

(2) Any person affected by any order or decision of the Registrar may appeal therefrom to the Court. Such appeal shall be by way of indorsement on the summons by the Registrar at the request of any party or by notice in writing to attend before the Court without a fresh summons. Such notice shall be given to the Registrar and to the opposite party within four days after the decision complained of, or such further time as may be allowed by the Registrar or by the Court.

Appeals in case of interlocutory applications.

(3) An appeal from the Registrar's decision shall be no stay of proceedings unless so ordered by the Registrar or by the Court.

No stay.

*Hearing by Registrar by Consent.*

38. Any cause or matter which may be determined by the Court may by consent of the parties be heard and determined by the Registrar or by some other person appointed by the Court, and in such case the findings of the Registrar or such person may be made a Rule of Court.

Reference by consent to and hearing by Registrar or other proper officer.

*Remission for Reports.*

39.—(1) The Court may at any time either before or during the hearing remit the whole or any particular subject-matter

Court may remit for report.

of the cause to an officer of the Court or other person appointed by them for local inquiry and report, and the Court may act on any report made to them in pursuance of such remit, or may hear or continue the hearing of the application or may take such other course as may appear to them to be desirable.

Hearing  
upon report.

Facts stated  
in report not  
to be  
challenged.

(2) Any party may give notice to the Registrar and to the other parties concerned that they desire before the Court act upon any such report to be heard by the Court thereon, and the case shall thereupon be put in the list for hearing, but upon such hearing it shall not be open to any party to dispute the correctness of any statement of fact contained in such report, unless the Court shall for good cause shown allow any finding of fact therein to be reconsidered.

#### *View.*

Power to  
view.

40. In any case in which, in the opinion of the Court, a view is necessary or desirable, it may be had by one or more members of the Court, as the Court may direct.

#### *Quorum.*

Quorum of  
Court.

41.—(1) The number of members of the Court to constitute a quorum shall be as follows—

For any interlocutory proceeding or any appeal from the Registrar, either the President or any two members of the Court.

For any determination upon a substantive application not concerned with procedure, three members.

Where  
change in  
constitution  
of Court has  
taken place.

(2) If during the hearing of any application or where the hearing has been adjourned, if between the first hearing and any adjourned hearing, a change shall have taken place in the persons sitting as members of the Court, the hearing shall be recommenced unless—

(a) The parties to the application who have appeared shall consent to the hearing proceeding before the Court as then constituted; or

(b) The Court shall be of opinion that no prejudice will result to any of the parties by the continuation of the hearing and shall so order.

#### *Preliminary Questions of Law.*

Court may  
decide pre-  
liminary  
questions  
of law.

42. The Court or the Registrar may, by consent of the parties to any proceedings or on the application of either party, order any point of law raised by the pleadings to be set down for hearing and disposed of at any time before the hearing of the application. The argument of such point of law shall take place before not less than three members of the Court, and upon such hearing, if, in the opinion of the Court, the decision of such point of law substantially disposes of the whole application, the Court may order that the argument shall be the hearing of the case, and thereupon may grant or dismiss the application or make such other order therein as to them may seem just.

#### *The Hearing.*

Hearing to  
be in open  
Court.

43. The hearing of every application other than interlocutory applications and of the arguments upon a point of law set down under Rule 42 shall take place in open Court at such place

convenient for the determination of the proceedings thereon, due regard being had to the place of residence of the applicants, and respondents, and of the witnesses as the Court shall direct.

44. If the applicant does not appear at the time and place appointed for the hearing, the Court may dismiss the application, and if the respondent does not appear at such time and place, and the Court are satisfied that the respondent was present or represented when the Order fixing the time for hearing was made or that notice of such Order was duly served, they may hear and determine the application *ex parte*, and if at any adjournment of the hearing the parties or either of them do not appear, the Court may decide the case in their absence.

Power of Court to proceed *ex parte* in certain cases.

45. The Court may from time to time adjourn any proceedings before it, but, subject to any such adjournment, the hearing of the cause, when once commenced, shall proceed, so far as in the judgment of the Court may be practicable and convenient, from day to day.

Hearing to proceed from day to day subject to right of Court to adjourn proceedings.

#### *Formal Objections.*

46. No proceedings before the Court shall be defeated by any formal objection. If it appears to the Court that an objection having substance can be cured if the proceedings are adjourned, and that no injustice will be caused by an adjournment, they shall, on the application of any party interested, grant such an adjournment as may be necessary, but may impose such conditions on the person applying for the adjournment as they shall think fit.

Formal objections not to prevail.

#### *Judgment of Court.*

47. After hearing the cause the Court may accede to or dismiss the application, or make an order thereon in favour of either party or reserve their decision, or make such other order upon the application as may be warranted by the evidence and may seem to them just.

Judgment of Court.

48. The Court may give their decision in writing, signed by the members, and it may be sent or delivered to the respective parties, and it shall not be necessary to hold a sitting of the Court for the purpose of giving such decision.

Judgment may be in writing and sent or delivered to the parties.

#### *Alteration or Rescission of Decisions.*

49.—(1) Clerical mistakes in any decisions or orders of the Court or errors arising therein from any accidental slip or omission may at any time be corrected by consent of the parties or by the Court on motion without an appeal.

Correction of clerical mistakes.

(2) The Court may review, rescind, or vary any decision or order of the Court on any of the following grounds, that is to say—

Review, etc., of decisions or orders, and grounds therefor.

(a) Surprise;

(b) Submission of further evidence which was not available at the hearing of the case;

(c) Some substantial wrong or miscarriage;

(d) Mistake or inadvertence.

No application shall be made to the Court for the review, rescission or variation of any decision or order of the Court unless one or more of the said grounds is alleged, and particulars are given of the facts giving rise thereto.

Particulars to be given on application to review.

50.—(1) Any application to the Court to review, rescind or vary any decision or order previously made by them, and not



Time limited  
for review,  
etc., of final  
orders.

Time limited  
for review,  
etc., of inter-  
locutory  
orders.

Application  
to be by  
motion.

being a decision or order upon an interlocutory application, shall be made within 28 days after the said decision or order shall have been communicated to the parties unless the Court think fit to enlarge the time for making such application.

(2) Any application to the Court to review, rescind or vary any decision or order previously made by it upon an interlocutory application shall be made within fourteen days after the said decision or order shall have been communicated to the parties, unless the Court think fit to enlarge the time for making such application.

(3) Every application under this Rule shall be made by motion; and no such motion shall be made without two clear days' previous notice in writing to the Registrar and to the parties affected thereby stating the grounds upon which a review, rescission or variation is sought.

### *Costs.*

As to costs.

51.—(1) Except in the case of disputes between two or more railway companies, each party shall bear and pay his own costs of and incident to all proceedings before the Court, unless in the opinion of the Court any such proceedings are frivolous and vexatious, in which case the Court may by their order so declare and shall direct by whom and in what proportion the costs are to be borne and paid.

(2) In the case of a dispute between two or more railway companies the payment of the costs of and incident to all proceedings before the Court shall be in the discretion of the Court.

Costs, how  
taxed.

52. Costs shall be taxed upon the order of the Court under which they are payable, and such costs shall, if required, be taxed by the Registrar or such other person as the Court may direct.

### *Appeals.*

Appeals on  
certain  
questions to  
Superior  
Court of  
Appeal.

53.—(1) The right of appeal shall be as provided by Section 26 of the Railways Act, 1921, incorporating the provisions of Section 17 of the Railway and Canal Traffic Act, 1888, and in accordance with the following rules.

(2) No appeal will lie from the Court upon a question of fact, or upon any question regarding the *locus standi* of an applicant or the right of audience.

(3) An appeal will lie from the Court to a Superior Court of Appeal upon a question of law.

(4) An appeal shall not be brought except in conformity with such Rules of Court as may from time to time be in operation in relation to such appeals by the authority having power to make Rules of Court for the Superior Court of Appeal.

(5) On the hearing of an appeal the Court of Appeal may draw all such inferences as are not inconsistent with the facts expressly found, and are necessary for determining the question of law, and will have all such powers for that purpose as if the appeal were an appeal from a judgment of a Superior Court, and may make any order which the Court could have made, and also any such further or other order as may be just, and the costs of and incidental to an appeal will be in the discretion of the Court of Appeal.

(6) The decision of the Superior Court of Appeal will be final; Provided that where there has been a difference of opinion between the Superior Courts of Appeal, the Superior Court of



Appeal in which a matter affected by such difference of opinion is pending may give leave to appeal to the House of Lords on such terms as to costs as such Court shall determine.

(7) Save as above stated, an order or proceeding of the Court is not to be questioned or reviewed, or to be restrained or removed by prohibition, injunction, certiorari or otherwise, either at the instance of the Crown or otherwise.

(8) If an appeal is lodged against a decision of the Court where the hearing of the cause has taken place in Scotland, or if the subject-matter of the decision appealed from is—

In what cases appeals lie to the Court of Session in Scotland.

1. An exceptional rate to or from a station or private siding in Scotland, from or to a station or private siding in Scotland.
2. A through rate between two places both being in Scotland.
3. The reasonableness of a charge for the services of collection and delivery at any place in Scotland.
4. The reasonableness of any fare for or in respect of the conveyance of passengers and their luggage in steam or other vessels to or from a port in Scotland, from or to a port in Scotland, or any other port not being in England and Wales.
5. The sum payable for accommodation and services provided at or in connection with a private siding in Scotland.
6. The charges or payments by way of rent or otherwise for sidings or other structural accommodation provided or to be provided in Scotland for the private use of traders,

the term "Superior Court of Appeal" shall be read as meaning the Court of Session in either Division of the Inner House. In all other cases the term "Superior Court of Appeal" means "His Majesty's Court of Appeal."

All other appeals are to His Majesty's Court of Appeal.

Provided always that on the application of any party to a proceeding the Court may direct that the appeal from the decision of the Court shall lie to such superior Court of Appeal as it may determine, having regard to the place of residence of the parties or to the nature and circumstances of the subject-matter of the decision.

#### *Enlargement or Abridgment of Time.*

54.—(1) The Court or the Registrar may enlarge or abridge the time appointed by these Rules, or fixed by any Order, for doing any act or taking any proceedings upon such terms, if any, as the justice of the case may require, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed.

Power to enlarge or abridge time.

(2) The time for delivering, amending, or filing any answer, reply, or other pleading or document may be enlarged by consent of the parties in writing, without application to the Court. Such written consent shall be left with the Registrar at the time of filing the answer, reply, or other pleading or document.

Enlarging time by consent.

#### *Transmission of Documents and Fees by Post.*

55. Where an applicant does not reside in London, and he has no solicitor or agent there, all pleadings and documents required by these Rules to be lodged with the Registrar or filed in or delivered at the office of the Court, may be sent by post, addressed to "The Registrar of the Court of the Railway Rates Tribunal," and the fees payable (if any) in respect thereof may be sent by post, by post office order, payable to "The Registrar

Documents, etc., sent by post.

of the Court of the Railway Rates Tribunal," to the Registrar, who shall cause stamps to be procured to the amount of such remittances, and such stamps to be obliterated. All letters, notices or documents sent by post to the officers of the Court shall be prepaid.

#### *Computation of Time.*

Time, how  
computed.

56.—(1) In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the Railways Act, 1921, or by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or a Bank Holiday or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.

(2) When the time for lodging any application, summons, notice or document with the Registrar expires during the time when the Registrar's office is closed as provided by Rule 59, the lodgment may be effected on the day on which the office is next open.

#### *Practice of Superior Courts when Applicable.*

Discretion of  
the Court in  
cases not  
expressly  
provided for.

57.—(1) Where not inconsistent with these Rules the general principles of practice or any particular practice of the Superior Courts may be adopted and applied at the discretion of the Court to proceedings before them.

(2) If any question should arise whether the Superior Court of England or Scotland is the Court to which an appeal shall lie, the same shall be determined by the Court before whom the appeal shall first come.

Provided that if any steps or proceedings have been taken under the practice of one Superior Court, and the Court shall think that the practice of any other Superior Court ought to be applied, they shall make such order as shall, as far as practicable and as is just in the circumstances, prevent the steps already taken from being rendered nugatory, and any expense already incurred from being thrown away.

#### *Sittings and Vacations.*

Sittings of  
Court.

58. The sittings of the Court shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings. The Michaelmas sittings shall commence on the 1st October and terminate on the 21st December; the Hilary sittings shall commence on the 11th January and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week and terminate on the Friday before Whit Sunday; and the Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 31st July, but nothing herein contained shall prevent the Court, if they see fit, hearing and determining any application, matter or thing during the Vacation, and any application or other proceeding prior to hearing may be made to the Court at any time when the Registrar's office is open.

Registrar's  
Office, when  
open.

59.—(1) Save as hereinafter mentioned, the Registrar's Office shall be open daily on week-days from 10 o'clock in the forenoon till 4 o'clock in the afternoon, except upon Saturday, when it shall be open from 10 o'clock in the forenoon till 1 o'clock in the afternoon, and except during the month of September, when

the office shall be open from 10 o'clock in the forenoon till 1 o'clock in the afternoon on each day from Monday to Friday and shall be closed on Saturday.

(2) The office shall be closed on the following days, namely, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Whit Monday and Whit Tuesday, Christmas Day and the three following days, any day appointed by law to be a bank holiday, the day appointed to be kept as the King's Birthday, and throughout the month of August.

*Procedure under Section 38 of the Railways Act, 1921, in respect of Exceptional Rates.*

60.—(1) Before any company under Section 38, Sub-sections (3) or (4), of the Railways Act, 1921, increases or cancels any exceptional rate which has not been fixed by the Court, such company shall give not less than 30 days' notice by an advertisement in such newspaper or newspapers as may be directed by the Registrar, and by posting the same in large type for not less than 30 days, in a prominent position in each railway station of the company in the town or place from or to which such rate operates, provided, however, that in any case where an exceptional rate is not in general use by a large number of traders the Registrar may direct that in lieu of such advertisements the company shall give notice in writing of all traders who to the best of their knowledge are accustomed to take the benefit of such exceptional rate, and such notice shall be sent by registered post to the usual place of address of the said traders.

Procedure  
under  
Section 38  
of the  
Railways  
Act, 1921.

(2) Any such notice as aforesaid shall specify the rate which the company propose to cancel or increase, and in the case of an increase of rate, the extent of such proposed increase, and shall state that any trader interested in the rates proposed to be cancelled or increased may, before the expiration of the said 30 days, make application to the Court objecting to the proposed cancellation or increase, and any application so made shall be deemed to be an application to which the foregoing Rules relative to an application to the Court apply.

(3) If any railway company proposes to increase or cancel an exceptional rate which has been fixed by the Court, it shall apply for the sanction of the Court by an application in accordance with Form No. 3 in the First Schedule and shall obtain from the Registrar directions as to the manner and time of giving notice by advertisement, public notice, or otherwise of such application, and as to whether express notice thereof is to be given to any particular persons. Any notice to be given shall specify the rate and, in the case of a proposed increase, the amount of the increase and state that any trader interested in the exceptional rate proposed to be cancelled or increased may apply to the Registrar to be added as a respondent to the application, and any trader applying accordingly within seven days of the publication of such notice or such extended time as the Court or Registrar may allow shall be entitled to be so added.

(4) Any application under Section 38, Sub-section (6), by a trader or representative body of traders to cancel or vary an exceptional rate shall name the railway company concerned as a respondent, and the applicant shall obtain from the Registrar directions as to the giving of notice of such application in the manner prescribed in regard to an application by a railway company for the cancellation or increase of a rate fixed by the

Court, and any trader interested in the exceptional rate proposed to be cancelled or varied may apply to the Registrar to be added as a respondent to the application and be entitled to be so added as provided in the last preceding paragraph.

(5) Provided always that the Court may by order prescribe that in lieu of the notices required by Section 38 of the Railways Act, 1921, being given in the manner hereinbefore set out, the said notices shall be given in such other manner as may be directed by such order.

*Proceedings under Section 22 (2) of the Railways Act, 1921.*

Proceedings  
under  
Section 22 (2)  
of Railways  
Act, 1921.

61. In any case where in pursuance of Section 22 of the Railways Act, 1921, the Minister of Transport places at the disposal of the Court information in his possession which he may think relevant to the matter before the Court, he shall submit the same in writing and the Registrar shall give notice to the parties who shall be entitled to inspect and take copies thereof and upon the hearing of the cause or matter the Court may require the attendance as a witness before them of such person as the Minister may appoint to represent him.

*Proceedings under Section 47 of the Railways Act, 1921.*

Proceedings  
under  
Section 47  
of Railways  
Act, 1921.

62. Where any written notice as to a proposed through rate or fare is given in pursuance of Section 47 of the Railways Act, 1921, a copy of such notice shall at the same time be forwarded to the Registrar by the party giving such notice.

*Forms of Summons and Notice of Motion.*

Form of  
application  
in certain  
cases.

63. Any application to the Registrar for which provision is not hereinbefore made may be by summons in accordance with Form No. 11 in the First Schedule hereto. Any application to the Court which is hereinbefore directed to be made by motion, or for which no provision is hereinbefore made, may be by motion in accordance with Form No. 12 in the First Schedule hereto.

*Table of Fees.*

What fees  
may be  
taken.

64. The fees, a table whereof is in the Second Schedule hereto, may be demanded and taken in respect of the proceedings before the Court.

Dated this twenty-seventh day of June, 1922.  
Approved—

<i>Birkenhead, C.</i>	<i>F. Gore Browne.</i>
<i>J. A. Clyde.</i>	<i>W. A. Jepson.</i>
<i>Crawford and Balcarres.</i>	<i>Geo. C. Locket.</i>

**SCHEDULES**

**FIRST SCHEDULE.**

**FORMS.**

- No. 1. Application where the cause is as between specific parties.
- No. 2. Indorsement on Application (Form No. 1).
- No. 3. Application where numerous Persons or Companies are interested.



- No. 4. Notice to a Person or Company appointed as Respondent to an Application (Form No. 3).  
 No. 5. Notice to a Person to whom it has been directed that Notice of Application shall be given.  
 No. 6. Notice of objection by a Person not a Respondent.  
 Nos. 7 & 8. Answers to Applications in Forms Nos. 1 and 3.  
 No. 9. Summons for Directions.  
 No. 10. Cross-summons for Directions.  
 No. 11. General Form of Summons.  
 No. 12. General Form of Notice of Motion.  
 No. 13. Form of *Subpoena ad testificandum*.  
 No. 14. Form of *Subpoena duces tecum*.

The forms of proceedings contained in this Schedule may be used in the cases to which they are applicable, with such alterations as the circumstances of the case may render necessary, but any variance therefrom, not being in matter of substance, shall not affect their validity or regularity.

## FORM NO. 1.

*Application where the cause is as between Specific Parties*

*In the Court of the Railway Rates Tribunal.*

19..... No.....

*Railways Act, 1921.*

*Between A.B., Applicant,  
 and  
 C.D., Respondent.*

*Application.*

1. A.B. (hereinafter called "the Applicant") is [a Trader] carrying on business as.....at.....in the County of.....and residing at.....in the County of.....

*or*

1. The X.Y. Association (hereinafter called "the Applicant") is an Association of Traders having its head office at.....in the County of.....which has obtained a certificate from the Board of Trade dated.....that it is a proper body to make such application as is herein contained (See Rule 30 (4))

*or*

1. The.....Railway Company (hereinafter called "the Applicant") is an Amalgamated Railway Company within the meaning of the Railways Act, 1921, and has its head office at.....

*(or as the case may be).*

2. }  
 3. } *Set out the facts giving rise to the Application.*  
 4. }

The Applicant claims the following relief—

*Set out the relief claimed, as for instance :*

1. An order directing that a through rate for goods from Station A on the.....Railway to Station B on the.....Railway by the following route, namely.....of the amount of.....shillings and.....pence per ton (or per truck) or such other through rate to and from the said Stations as shall seem to the Court just shall be fixed and established.

*or*

2. An order directing that the Respondent Company do allow to the Applicant out of the station to station rates in respect of the goods specified



below at the.....station [or Private Siding at.....] an amount of.....pence per ton for terminal services not performed by the Respondents. The goods in respect of which the allowance is claimed are.....

or

3. That it may be declared that the charge sought to be made by the Respondent Company for the services and accommodation described in paragraph.....above being services and accommodation for which no authorized charge is applicable is not reasonable.

or

4. An order that the exceptional rates for the carriage of merchandise from the private siding of the Applicant situate at.....on the Railway of the Respondent Company to divers stations, whereof particulars are set out in the Schedule annexed hereto, being rates in operation on "the appointed day" referred to in the Railways Act, 1921, may be continued, or that such other exceptional rates as to the Court shall seem just may be determined and fixed by the Court in lieu thereof.

or

5. That it may be declared that the amount sought to be charged by the Respondent Company for the collection and [or] delivery of merchandise to and from the.....station on its Railway, namely, ..... is unreasonable.

(or otherwise as the case may require.)

Dated.....19.....

Signed.....

#### FORM No. 2.

##### *Indorsement on Application (Form No. 1)*

To the within named.....Respondent.

You are hereby commanded by the Court of the Railway Rates Tribunal within 15 days from the service upon you of the within Application to put in your answer to the same, and take notice that in default of such answer being put in within such time or any extension thereof duly granted, the said Court may proceed to hear the said application in your absence.

(Sealed.)

##### *Indorsement.*

The within application is made by A.B. of.....(stating address and occupation, and if there be a solicitor in the matter) by C.D. of .....(and if he be agent for the solicitor) as agent for E.F. of .....solicitor for the said A.B., and was filed on the.....day of.....19.....

#### FORM No. 3.

*Application where Numerous Persons or Companies are Interested.*  
*In the Court of the Railway Rates Tribunal.*

*Railways Act, 1921.*

*Between A.B., Applicant,*  
*and*

*All persons and Companies whom it may concern.*

19.....No.....

*Application.*

1. (Give particulars regarding the Applicant as in Form 1.)
2. } As in Form 1.
3. }
4. }

The Applicant makes claim as follows—

*In the case of an application under Rule 7 :*

1. That some proper person or Company may be appointed to represent the respondents to this Application and that an order may be made directing what notices of this Application are to be given to what persons and in what manner.

*In the case of an application under Rule 8 :*

1. That directions may be given as to the manner and time of hearing of the application and as to what public or other notice is to be given of such hearing.

2. (Set out the relief claimed, as for instance)—

1. An order directing that the article described in the General Classification of merchandise as "....." should be comprised in the class numbered.....instead of in the class numbered.....

OR

2. An order directing that the article described in paragraph.....above which is not specified in the General Classification of merchandise should be included in Class.....of such General Classification under the description following— .....

OR

3. A Declaration that the Article known as.....ought to be carried by the Railway Companies of Great Britain as Passengers' Luggage and that no charge ought to be made for the same when accompanied by a passenger save such as is authorized for passengers' luggage.

OR

4. A Declaration that the article known as.....is not properly included in the description of "dangerous goods" and ought to be carried by a Railway Company as general merchandise and an order that the said article be included in Class.....of the General Classification.

OR

5. For an order that the Railway Rates and Charges in connection with the carriage of merchandise [or the Fares for the carriage of passengers as the case may be] in force as respects the Railway Companies of Great Britain on the 15th August, 1921, be reduced by amounts equal to.....per cent of such charges [or Fares] respectively or by such other amounts as to the Court shall seem just, and that the charges [or Fares] specified in the Order of the Court to be made hereon shall come into operation at the expiration of.....calendar months from the date of the Order of the Court hereon and shall be thenceforth the charges [or Fares] which the said Railway Companies are entitled to make till the appointed day or till further Order of the Court.

OR

6. For an order that the Rates and Charges in connection with the carriage of merchandise and passengers of the A.B. Railway Company which were in force on the 15th day of August, 1921, may be increased by the percentages and in the proportions shown in the Schedule annexed hereto and that as from a date to be named in the Order to be made hereon and until the

appointed day or until further order of the Court the said increased charges or such other increased charges as to the Court shall seem just shall be the charges which the said Railway Company shall be entitled to make for the carriage of merchandise and passengers and for the other services mentioned in the said Schedule.

or

7. A Declaration that the conditions as to the packing of the following articles.....which the Respondent Company seeks to impose as specified in paragraph.....above are unreasonable.

(or otherwise as the case may require.)

Dated.....19

Signed.....

#### FORM No. 4.

*Notice to a Person or Company appointed as Respondent to an Application. (Form No. 3.)*

*In the Court of the Railway Rates Tribunal.*

19..... No.....

*Railways Act, 1921.*

Between A.B., Applicant,  
and

All Persons and Companies whom it may concern.

To C.D. of.....

[or To the E.F. Railway Company.]

Take notice that an Application has been made to the Court of the Railway Rates Tribunal by the above-named A.B., of which a copy is annexed hereto, and that by an Order of the Court dated.....it was directed that you should be served with the said application, and that in accordance with the Rules of the Court you are thereby made a party to and Respondent in such Application.

Your attention is called to the indorsement upon the Copy of the Application annexed hereto commanding you to put in your answer to the said Application.

Dated.....19..... Signed.....

#### FORM No. 5.

*Notice to a Person to whom it has been directed that Notice of Application shall be given.*

*In the Court of the Railway Rates Tribunal.*

19..... No.....

*Railways Act, 1921.*

Between A.B., Applicant,  
and

All Persons and Companies whom it may concern.

To G.H., of.....

Take notice that an application of which the serial number is 19..... No.....has been made to the Court of the Railway Rates Tribunal by the above-named A.B. claiming the relief shown at the foot hereof, and that by an Order of the Court dated.....it was directed that

notice of such application should be given to you [*add if appropriate* and that by the said Order the time within which you are entitled to give notice of objection to the said Application is limited to.....days after the service of this Notice. If you give notice in writing to the Registrar of the Court within the time limited as aforesaid you will be entitled to attend and be heard on the said Application.]

The relief claimed in the said Application is as follows—

Signed.....

Dated.....19.....

#### FORM No. 6.

##### *Notice of Objection by a Person not a Respondent.*

Heading as in Forms 1 or 3, as the case may require.

19..... No.....

Notice by M.N. of.....  
in the County of.....

Take notice that M.N. objects to the application of A.B. against.....  
dated the.....day of..... 19.....whereof the serial number is  
19..... No.....

The interest of M.N. in the said application is that : [he is a Trader whose business includes consigning and receiving goods by the X.Y. Railway in circumstances similar to those referred to in the said application.]

or

[The said M.N. is a Chamber of Commerce which has obtained a certificate from the Board of Trade dated.....that it represents persons likely to be affected by the decision to be given on the said application] (See Rule 30 (4) )

or otherwise as the case may be.

The objection is to the whole of the relief asked for in the said application [or to such part of the relief asked for in the said application as consists of.....].

The said M.N. desires to attend and be heard on the said application.

Signed.....

Dated.....19.....

#### FORM No. 7.

##### *Answer to Application in Form No. 1.*

*In the Court of the Railway Rates Tribunal.*

19..... No.....

*Railways Act, 1921.*

Between A.B., Applicant,  
and  
C.D., Respondent.

##### *Answer.*

The above-named respondent C.D. in answer to the application of A.B. states that—

1. { *Set out the answer traversing any facts which are not admitted, and showing whether the whole of the claim made is objected to or whether any, and if so what, part is conceded.*
2. {

This answer is made by the Respondent personally [or on behalf of the respondent C.D. by E.F. who is acquainted with the facts stated therein].

Signed.....

Dated.....19.....

## FORM No. 8.

*Answer to Application in Form No. 3.**In the Court of the Railway Rates Tribunal.*

19..... No.....

*Railways Act, 1921.**Between A.B., Applicant,  
and**All Persons and Companies whom it may concern.**Answer.*

E.F. of .....  
 being a person [or Company] on whom a copy of Application of the above-named A.B. of 19..... No..... was served by order of the Registrar of the Court of the Railway Rates Tribunal dated..... [or being a person (or Company) appointed by order of the Court as a representative respondent and authorized to defend in the matter of the application of the above-named A.B. of 19..... No..... on behalf of all persons and Companies concerned states that]

*Set out the answer as in Form 7.*

Signed.....

Dated.....19.....

## FORM No. 9.

*Summons for Directions.**Heading as in Forms Nos. 1 or 3 as the case may require.*

19..... No.....

Let all parties concerned attend the Registrar of the Court sitting at ..... on the..... day of.....  
 19..... at..... o'clock in the..... noon on the hearing of an Application on the part of..... for an Order for directions as follows—

1. *Joinder of other parties as Respondents.*—[Naming parties and stating reasons for joinder.]
2. *For further pleadings.*—[Stating pleadings required.]
3. *Leave to amend.*—[Stating amendments proposed.]
4. *Particulars.*—That further and better particulars be furnished in respect of [state the matters specified in pleadings of which further particulars are sought.]
5. *Discovery and production.*—That lists of documents be exchanged between the parties [or that the parties be ordered to make discovery of documents on oath] within..... days and inspection given within..... days thereafter.  
 The character and description of the documents referred to are as follows—
6. *Interrogatories.*—For leave to Administer. [Copy of interrogatories asked for to be annexed to the Summons.]
7. *Date and place of hearing of the cause.*—That the time and place of hearing may be fixed and generally for such directions as to the conduct of the cause as may appear at the hearing on this Summons to be for the convenience of the Court and the parties.
- [8. *Additional Members.*—That a request be made by the Court to the Minister of Transport to nominate two Members selected from the Panels set up in accordance with Section 24 of the Railways Act,



1921, and that the Members so to be nominated be added to the Court for the purpose of hearing this cause.]

This Summons was taken out by.....  
(Solicitor for.....).

Dated.....19.....

(To be signed by the Applicant  
or his Solicitor.)

(Sealed.)

#### FORM No. 10.

*Cross-Summons for Directions or Summons for further Directions.*

*Heading as in Summons for Directions.*

*To the Registrar of the Court of the Railway Rates Tribunal and to the above-named [Applicant].*

Take Notice that above-named [Respondent] intends to apply to the Registrar of the Court on the.....day of.....  
19.....at.....o'clock in the.....noon for further directions in this cause as follows—

- 1.
- 2.

This Summons was taken out by.....  
(Solicitor for.....).

Dated.....19.....

Signed by Respondent or  
Solicitor for Respondent.

#### FORM No. 11.

*General Form of Summons.*

*Heading as in Forms Nos. 1 or 3 as the case may require.*

19..... No.....

Let all parties concerned attend the Registrar of the Court Sitting at.....  
.....on the.....day of.....  
19.....at.....o'clock in the.....noon on the hearing of an Application of.....  
.....for an Order as follows—

This Summons was taken out by.....  
(Solicitor for.....)

Dated.....19.....

Signed.....  
(Sealed.)

#### FORM No. 12.

*General Form of Notice of Motion.*

*Headings as in Forms Nos. 1 or 3 as the case may require.*

19..... No.....

Take Notice that the Court will be moved by [Counsel on behalf of] .....  
.....on the.....day of.....19.....at.....  
o'clock in the .....noon, or as soon thereafter as [Counsel or the said.....]  
can be heard for an order that.....

To [naming the Respondents to the motion] [and his Solicitors] [or their Solicitors].

Dated.....19.....

Signed.....

## FORM No. 13.

*Subpoena ad Testificandum.**In the Court of the Railway Rates Tribunal.**Railways Act, 1921.*In the matter of the Application of A.B., Applicant,  
against

The Company, Respondent.

George the Fifth, by the Grace of God, etc., to [the names of three witnesses may be inserted], greeting. We command you to attend before the Court of the Railway Rates Tribunal at.....on.....day, the.....day of.....19....., at the hour of.....in the.....noon, and so from day to day until the above application is tried, to give evidence on behalf of the Applicant (or Respondent).

Witness, etc.....

## FORM No. 14.

*Subpœna Duces Tecum.**In the Court of the Railway Rates Tribunal.**Railways Act, 1921.*In the matter of the Application of A.B., Applicant,  
against

The Company, Respondent.

George the Fifth, by the Grace of God, etc., to [the names of three witnesses may be inserted], greeting. We command you to attend before the Court of the Railway Rates Tribunal at.....on.....day, the.....day of.....19.....at the hour of.....in the.....noon, and so from day to day until the above Application is tried, to give evidence on behalf of the applicant (or Respondent), and also to bring with you and produce at the aforesaid time and place [specify documents to be produced].

Witness.....

## SECOND SCHEDULE.

## SCHEDULE OF FEES.

	£	s.	d.
Receiving and filing every application or statement of case, or answer thereto . . . . .	1	0	0
Receiving and filing every reply, affidavit, or other proceeding . . . . .	0	2	6
(Note.—No extra charge is to be made for documents that may accompany any application, answer, reply or affidavit.)			
On taking an affidavit or a declaration or an affirmation, for each person making the same . . . . .	0	2	0
And in addition thereto for each exhibit therein referred to and required to be marked, or for each schedule required to be marked . . . . .	0	1	4
Every summons upon interlocutory proceedings . . . . .	0	5	0
Every notice of motion before the Court . . . . .	0	5	0
Every order made on a summons or motion . . . . .	0	2	6
For every appointment for hearing of a cause . . . . .	0	2	6
Every subpoena . . . . .	0	2	6
Every hearing not in the nature of an interlocutory proceeding, or otherwise provided for, each day . . . . .	2	0	0
Every decision on a cause other than between Railway Companies . . . . .	1	0	0
On drawing up and issuing under seal an Order made in the Court of the Railway Rates Tribunal . . . . .	1	0	0
Office copies of documents (per folio) . . . . .	0	0	8

On an Allocatur for taxation, two and a half per cent, on the £ s. d.  
amount allowed in the bill of costs.

Every hearing of a cause as between Railway Companies each day 5 5 0  
Every decision of a cause as between Railway Companies . . . 2 2 0

*Note.*—The hearing fee for the first day is to be paid by the Applicant, the hearing fee for each subsequent day is to be paid by the party the hearing of whose evidence or argument occupies the day or the greater part of the day, as the case may be, unless the Court otherwise directs.

All fees shall be paid by adhesive stamps, which shall be sold at the offices of the Tribunal.

The fees on appeal are governed by the rules of the Court to which the appeal lies.

No fees are payable by the Minister of Transport in respect of Proceedings before the Railway Rates Tribunal.



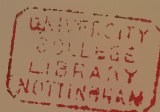
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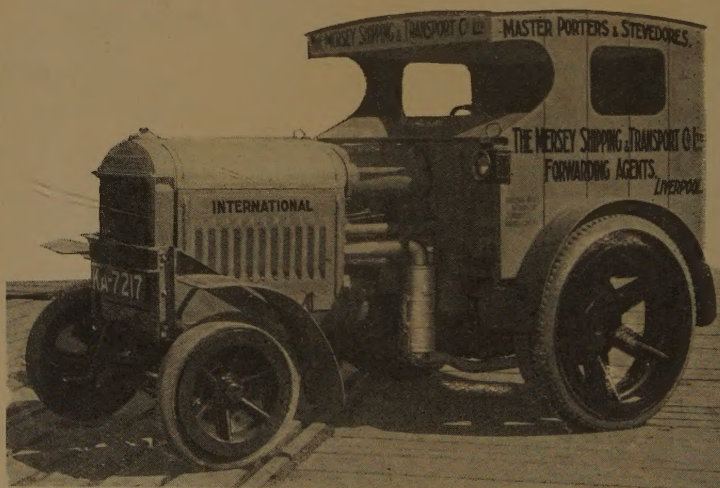
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